RECORD AND BRIEFS

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IN THE
Supreme Court of the United States

RYAN AUSTIN COLLINS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment's automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from the house.

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Petitioner Ryan Austin Collins respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Virginia.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is reported at 790 S.E.2d 611 (Va. 2016). App. 1. The decision of the Court of Appeals of Virginia is reported at 773 S.E.2d 618 (Va. Ct. App. 2015). App. 32. The decision of the Circuit Court of Albemarle County was issued from the bench and is not reported, but is reprinted at App. 50.

JURISDICTION

The Supreme Court of Virginia entered judgment on September 15, 2016. App. 26. It then denied Collins's petition for rehearing on November 22, 2016. App. 111. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Virginia Code § 18.2-108, upon which Collins was convicted, reads:

> A. If any person buys or receives from another person, or aids in concealing, any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.
>
> B. If any person buys or receives any goods or other thing, used in the course of a criminal investigation by law enforcement that such person believes to have been stolen, he shall be deemed guilty of larceny thereof.

STATEMENT OF THE CASE

I. Factual history.

The facts are not in dispute. Officers McCall and Rhodes of the Albemarle County Police Department were looking for the person who eluded them on a motorcycle in two high-speed incidents. App. 3. The rider's helmet had obscured his face. App. 3, 67, 70. For reasons not relevant here, the officers suspected Petitioner, Ryan Collins. App. 3, 5.

A few months after the eluding incidents, Officers McCall and Rhodes encountered Collins at the DMV. App. 5. During their conversation, one officer visited Collins's Facebook page and spotted a picture of a motorcycle, covered by a tarp, parked at a house. Collins told the officers he did not know anything about the motorcycle. App. 5.

After leaving the DMV, Officer Rhodes located the house in the photograph on Dellmead Lane. App.

5-6. Collins's girlfriend (and mother to his child) lived there, as did Collins himself at least several nights each week. App. 27, 91. The court below thus referred to the Dellmead Lane house as "Collins's residence," which is accurate for Fourth Amendment purposes.[1] App. 12.

The Dellmead Lane house was a brick rancher. App. 56-57. Its driveway ran from the street up to the left side of the house. App. 30, 112 (photograph). The driveway passed the front threshold of the house, and came to a dead end about halfway alongside the left side of the building. App. 30, 114 (photograph).

A dark colored car was parked about halfway up the driveway, where a visitor might pass to reach the front door. App. 112-13 (photographs). A motorcycle covered in a white tarp sat behind that car. App. 6, 112-13 (photographs). The motorcycle rested on the part of the driveway running past the house's front perimeter. App. 30. This portion of the driveway was enclosed on three sides: the home on one side, a brick retaining wall on the opposite side, and a brick wall in the back. App. 30, 57, 114 (photograph). The motorcycle was no more than a car's length away from the side of the dwelling. App. 30, 114 (photograph).

Seeing the motorcycle covered in a tarp, Officer Rhodes walked onto the driveway. App. 6. He did not have permission to go onto this property. App. 88. Officer Rhodes then entered the partially enclosed parking space alongside the home, removed the tarp, and obtained the license tag and VIN number. App. 6.

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[1] "An overnight guest in a home may claim the protection of the Fourth Amendment." *Minnesota v. Carter*, 525 U.S. 83, 90 (1998).

After running the VIN number, Officer Rhodes learned the motorcycle was flagged as stolen. App. 6. Officer Rhodes knocked at the front door, and Collins answered. App. 6. Collins admitted that he owned the motorcycle. App. 7-8. Officer Rhodes then arrested Collins for possession of stolen goods. App. 8.

II. Proceedings below.

Collins was charged with receiving stolen property with knowledge that it was stolen. App. 8.

Moving to suppress, Collins challenged Officer Rhodes's trespass onto curtilage as unconstitutional. App. 8, 97-98. Collins also argued that the automobile exception did not apply to vehicles located on private property. App. 8, 97-98, 103-04. The Circuit Court of Albemarle County denied the motion to suppress. App. 10. Collins was later convicted of the charge. App. 10.

Collins appealed. The Court of Appeals of Virginia observed that the Commonwealth "[did] not dispute that Officer Rhodes's actions constituted [Fourth Amendment] searches." App. 38. The court reasoned that the only question before it was what exceptions (if any) to the Warrants Clause justified Officer Rhodes's warrantless searches. App. 38.

The Court of Appeals assumed the partially enclosed parking space where the motorcycle was parked was curtilage. App. 40-41. The court also reflected in a footnote that the automobile exception might not apply to vehicles on private property. App. 43. But the court held "Officer Rhodes acted lawfully under the Fourth Amendment in entering the property and searching the motorcycle." App. 44.

Collins again appealed, and the Supreme Court of Virginia granted his petition.

The court applied what it called a "simple, bright-line test for the automobile exception." App. 14. "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." App. 14-15 (quoting *Maryland v. Dyson*, 527 U.S. 465, 467 (1999)). Simply applying this rule to the motorcycle and facts of this case, the court held that probable cause existed. App. 15 ("Officer Rhodes had several reasons to believe the motorcycle was contraband."). Nor was there any real question that the motorcycle was "readily mobile." Accordingly, the warrantless searches were lawful. *Id.*

The court then added that the automobile exception applied to the motorcycle even though it was located on private property. App. 19-20. The court's justification was threefold. First, the U.S. "Supreme Court has never limited the automobile exception such that it would not apply to vehicles parked on private property." App. 20. Second, "[o]ur Court has held that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view." App. 20. Third, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *California v. Carney*, 471 U.S. 386 (1985), "did not distinguish the automobile exception on a public roadway versus on a private driveway." App. 20. Instead, *Carney* focused only on finding that the automobile exception applied to a motor home. App. 20. And any reliance on *Coolidge* "is misguided" because "the *Coolidge* plurality opinion cannot be fairly read to create a bright-line rule precluding warrantless searches on

private property under all circumstances." App. 21 (quoting *United States v. Brookins*, 345 F.3d 231, 237 (4th Cir. 2003)). The court then held that the automobile exception applies to a vehicle located on private property. App. 21-22.

The court concluded that Officer Rhodes' Fourth Amendment searches were "justified" under the automobile exception, and affirmed. App. 26; App. 111 (denying rehearing).

REASONS FOR GRANTING THE PETITION

The issue here is whether the automobile exception permits police to enter private, residential property (specifically, the curtilage of the home), and to search vehicles there without a warrant.

The Supreme Court of Virginia held that the automobile exception permits such a warrantless search. That was a serious constitutional error.

To be sure, the automobile exception is easily applied to most circumstances. In general, if "a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Maryland v. Dyson*, 527 U.S. 465, 467 (1999).

But this Court has always stopped short of applying that rule on private, residential property. *Coolidge v. New Hampshire*, 403 U.S. 443, 474-75, 479-80, 482 (1971) (majority opinion); *id.* at 458-64 (plurality opinion) (police towed a car from the defendant's driveway after arresting him; the court found no automobile exception applied). Residential private property implicates heightened privacy

interests different from cars operating on public streets, parking lots, or gas stations. A search of a vehicle pulled over on the side of a public highway is constitutionally different from a search of a vehicle parked alongside a house. *California v. Carney*, 471 U.S. 386, 392-93 (1985).

If police can search a car *wherever* they find it with no warrant, this Court's protection of the curtilage will lose much of its value. *Florida v. Jardines*, 133 S. Ct 1409, 1414-15 (2013) (observing that curtilage should receive the same protections as the home).

Yet the Supreme Court of Virginia is not alone in broadening the automobile exception. *See, e.g., United States v. Hatley*, 15 F.3d 856, 859 (9th Cir. 1994) (holding that "the vehicle exception applies to a search of a vehicle parked in a private driveway" and permitting a warrantless search of the defendant's car in his driveway); *Harris v. State*, 948 So.2d 583, 597 (Ala. Ct. Crim. App. 2006) (holding that "the automobile exception applies to vehicles located on private property without any additional exigency requirement," and permitting a warrantless search of a vehicle parked *behind* the defendant's house).

Other courts, however, properly disagree. *United States v. Fields*, 456 F.3d 519, 524-25 (5th Cir. 2006) (holding that "the automobile exception may not apply when a vehicle is parked at the residence of the criminal defendant"); *State v. Vickers*, 793 S.E.2d 167, 171 (Ga. Ct. App. 2016) (holding that "vehicles, like any other item or location within the curtilage of a residence, are not to be searched without a warrant, consent, or exigent circumstances" and refusing the apply the exception to a search of a car in a

defendant's driveway); *Redwood v. Lierman*, 772 N.E.2d 803, 813 (Ill. App. Ct. 2002) (observing that "one's backyard is a vastly different place, for purposes of the Fourth Amendment, than a public street," and refusing the apply the automobile exception to a vehicle parked on curtilage).

Certiorari is warranted here to resolve the split of authority and to clarify the proper scope of the automobile exception to the Fourth Amendment's warrant requirement.

I. The Supreme Court of Virginia erred by significantly expanding the automobile exception.

A. The automobile exception does not permit officers to enter curtilage.

The court below applied a "simple, bright-line test for the automobile exception." App. 14. Quoting *Maryland v. Dyson*, the court reflected "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more." App. 14-15. Simply applying this rule to the motorcycle and facts of the case, the court held the warrantless searches lawful. App. 15.

This Court's "bright line rule" cannot apply to vehicles parked on private, residential property—particularly the curtilage of the home. If it did, any vehicle with probable cause could be searched anywhere, any time. Officers could creep into garages and carports at night, removing tarps, rummaging for contraband in glove boxes. If officers can intrude upon curtilage to search a vehicle, there is no reason why

they could not walk through a house to reach a car in the backyard. All of this could occur with no warrant and no special exigency. *Dyson*, 527 U.S. at 466 (the automobile exception "has no separate exigency requirement").

The automobile exception has two premises—inherent mobility and a reduced expectation of privacy. *Carney*, 471 U.S. at 390-92. Both are unique to vehicles.

The second of these premises is absent in the curtilage of the home. The law "regard[s] the area immediately surrounding and associated with the home—what our cases call the curtilage—as part of the home itself for Fourth Amendment purposes." *Jardines*, 133 S. Ct. at 1414. "At common law, the curtilage is the area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life, and therefore has been considered part of home itself for Fourth Amendment purposes." *Oliver v. United States*, 466 U.S. 170, 180 (1984). "This area around the home is intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened." *Jardines*, 133 S. Ct. at 1415. "The protection afforded the curtilage is essentially a protection of families and personal privacy." *California v. Ciraolo*, 476 U.S. 207, 212-13 (1986).

Accordingly, the automobile exception has never authorized warrantless searches intruding upon places like the home. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) ("[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and

freedom in one's residence."). The automobile exception does not permit police to search homes and curtilage, even if they are ultimately looking for a vehicle. "[N]o Supreme Court decision allows warrantless entry into areas of a home or business where the owner has a reasonable expectation of privacy simply because the police are in search of an automobile." *Binder v. Redford Twp. Police Dep't*, 93 F. App'x 701, 703 (6th Cir. 2004) (holding that an officer's warrantless entry into a garage to seize a motorcycle was not justified by the automobile exception).

B. The search here intruded on the curtilage of the home.

Here, Officer Rhodes walked into a partially enclosed space alongside the house. He did not "walk and talk" up to the front porch. *See Jardines*, 133 S. Ct. at 1415 n.1. Instead, to investigate the motorcycle, Officer Rhodes walked past the front porch. App. 30, 113-14 (photographs). The motorcycle was enclosed on three sides: the home on one side, a "retaining wall" on the opposing side, and a brick wall along the back. App. 30, 57, 114. Only the entryway into the parking space was open. This private space was a dead end, where home visitors would not normally walk. *Jardines*, 133 S. Ct. at 1422 (Alito, J., dissenting) ("Of course, this license has certain spatial and temporal limits. A visitor must stick to the path that is typically used to approach a front door, such as a paved walkway.").

As the photographs show, the motorcycle sat just a few feet from the side of the house, "beyond the front perimeter wall of the house." App. 30, 112-14.

This was curtilage, as "easily understood from our daily experience." *Jardines*, 133 S. Ct. at 1414-15 ("[The Fourth Amendment's protection of the home] would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window.").

In fact, "[t]he Commonwealth does not dispute that Officer Rhodes's actions constituted searches." App. 38. If the partially enclosed parking space was not curtilage, there would be no Fourth Amendment search by entering into the area. Officer Rhodes would have simply walked on an "open field." *United States v. Jones*, 565 U.S. 400, 411 (2012). By conceding that entering the area was a Fourth Amendment search, the Commonwealth conceded that the partially enclosed parking space was curtilage. *See id.*

II. There is no proper justification for expanding the automobile exception.

The Supreme Court of Virginia's primary error was simply applying an apparent bright-line rule to circumstances that are meaningfully different. App. 14-15 (quoting *Dysons* and "applying that test").

Along the way, the court made several errors. First, it wrongly discounted this Court's decisions in *Coolidge* and *Carney*. Second, it held that this Court has never limited the automobile exception to public property. Third, it relied on its own precedent about the plain view doctrine—which confuses the Fourth Amendment interests at stake here.

A. *Coolidge* and *Carney* recognized privacy interests in residential property.

The Supreme Court of Virginia wrongly believed that *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *California v. Carney*, 471 U.S. 386 (1985) did not constrain its analysis. App. 20.

In *Coolidge*, two cars were parked in the defendant's driveway. 403 U.S. at 447-48. After arresting Coolidge, the police towed his cars and searched them. *Id.* at 447. In one of the cars, police found evidence incriminating Coolidge in the murder of a 14-year old. *Id.* at 448. New Hampshire argued that the car searches were permitted under the automobile exception. *See id.* at 458-64 (plurality opinion). The Court rejected that argument, and threw out the evidence.

The *Coolidge* plurality stated that "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." 403 U.S. at 461 (Section II-B). The plurality noted that "it seems abundantly clear that there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose." *Id.* at 463 n.20. The plurality found the automobile exception "simply irrelevant." *Id.* at 462.

Moreover, a majority in *Coolidge* defended the presumption of requiring a warrant, even for some car searches. *See id.* at 473-84 (Section II-D); *id.* at 491

(Harlan, J., concurring). The majority expressed alarm at the idea of a bright line rule that would permit a search of *any* automobile, *anywhere*, so long as probable cause existed. *Id.* at 479 (observing that, if no warrant was required to search a car where there was "no stopping, and the vehicle was unoccupied," then "it is but a short step to the position that it is *never* necessary for the police to obtain a warrant before searching and seizing an automobile").

In other words, "if the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." *Id.* at 480. The *Coolidge* Court held that such a result "would cast into limbo the whole notion of a Fourth Amendment warrant requirement." *Id.* at 483.

This is a clear statement that the *Coolidge* majority meant to stop short of permitting warrantless, non-exigent searches of cars on the owner's private property. After all, the Court *invalidated the search in that case.*

Similarly, in *California v. Carney*, 471 U.S. 386 (1985), this Court again limited the scope of the automobile exception.

In that case, police had probable cause to believe that Carney was selling marijuana in a motor home parked in a city parking lot. *See id.* at 388. "Without a warrant or consent, one agent entered the

motor home" and saw drugs. *Id.* The motor home was seized and searched, and more drugs were found. *Id.*

The *Carney* Court began by recognizing the two rationales for the automobile exception. First, automobiles are readily movable. *Carney*, 471 U.S. at 390-91. Second, automobiles carry a lower expectation of privacy, derived "from pervasive regulation of vehicles capable of traveling on the public highways." *Id.* at 391-92. This Court then announced when these underlying justifications for the automobile exception "come into play." *Id.* at 392-93. Those justifications are present "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use *and is found stationary in a place not regularly used for residential purposes*—temporary or otherwise." *Id.* (emphasis added).

This Court then applied those principles to the facts of the case. The Court determined that the motor home was readily mobile, licensed to operate on public streets, and "was so situated" that it would be objectively understood as being used as a vehicle and not a residence. *Id.* at 393. That is, the motor home was "parked" in a "lot"—it was "stationary in a place not regularly used for residential purposes." *Id.* at 392. The automobile exception applied. *Id.* at 392-93.

Both *Coolidge* and *Carney* reflect this Court's interest in reserving application of the automobile exception to cars parked on residential private property, such as the curtilage in this case.

The Supreme Court of Virginia set *Coolidge* and *Carney* aside by stating that "those cases did not distinguish the automobile exception on a public

roadway versus on a private driveway." App. 20. But the *Coolidge* plurality—and arguably the majority—did exactly that by affirming the automobile exception on the open highway but finding it inapplicable to the suspect's unoccupied car, sitting in his driveway. 403 U.S. at 461-63 (plurality opinion); *id.* at 479-80 (majority opinion). The *Carney* Court also repeatedly noted that the motor home searched in that case was located in a parking lot, and not in a place "regularly used for residential purposes." 471 U.S. at 392.

B. The court failed to focus on the privacy and property interests in *residential* private property.

The Supreme Court of Virginia further held "[t]he Supreme Court has never limited the automobile exception such that it would not apply to vehicles parked on private property." App. 20. Even setting aside *Coolidge* and *Carney*, this reasoning does not support expanding the automobile exception to private, residential property and curtilage.

Naturally, many car searches occur on public property. *See, e.g.*, *United States v. Ross*, 456 U.S. 798, 801 (1982) (car stopped on public street); *Brinegar v. United States*, 338 U.S. 160, 162-63 (1949) (car stopped on public highway).

Other car searches occur on private property, but do not implicate the residential privacy of the car's owner. *See, e.g.*, *Carney*, 471 U.S. at 392; *Pennsylvania v. Labron*, 518 U.S. 938, 939 (1996) (in the second paired case, car was on driveway to farmhouse owned by a non-defendant); *California v. Acevedo*, 500 U.S. 565, 567 (1991) (car was stopped

and searched after it "started to drive away" from apartment complex parking lot). And sometimes, private property stands open to the public or is not used for residential purposes. *See, e.g.*, *Colorado v. Bannister*, 449 U.S. 1, 1 (1980) (car searched at a service station); *South Dakota v. Opperman*, 428 U.S. 364, 366 (1976) (car searched at an impound lot).

None of those cases factually undercut the privacy interests raised by searches on private property used for residential purposes—like the curtilage used by Collins.

Similarly, the Supreme Court of Virginia reflected upon its previously holding "that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view." App. 20. This point has little relevance here. Of course, observation of effects left in plain view does not give rise to a Fourth Amendment search. *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). But the plain view doctrine says nothing about the physical intrusions of this case: physical entry onto curtilage within a few feet of the house and removal of a tarp to read a VIN number.

This focus on privacy interests also obscures the interests implicated in this case. At issue here are also Collins's property interests infringed upon by a physical entry onto curtilage and subsequent vehicle search. The related context of determining when a Fourth Amendment search occurs is instructive.

"The text of the Fourth Amendment reflects its close connection to property, [and this Court's] Fourth Amendment jurisprudence was tied to common-law

trespass, at least until the latter half of the 20th century." *Jones*, 565 U.S. at 405. The Court's later cases, originating in *Katz v. United States*, introduced an "expectations of privacy" analysis to determine when a Fourth Amendment search occurred. *Jones*, 565 U.S. at 405-06. Importantly, however, these later cases did not override (but merely added to) the Fourth Amendment's adherence to protecting property rights. *Id.* at 406-07. That property-based approach continues to endure. *See, e.g.*, *Jardines*, 133 S. Ct at 1414-15 (the unlicensed physical intrusion onto a porch was a Fourth Amendment search).

The same privacy and property interests are implicated by the issue here. The officer's unlicensed, physical intrusion upon curtilage and the removal of a tarp were Fourth Amendment searches. To ignore the property interests implicated by those searches, when determining whether a bright-line exception to the Warrant Clause should apply, incorrectly diminishes the Fourth Amendment's protection of property interests. *See Soldal v. Cook Cty.*, 506 U.S. 56, 64 (1992) (Fourth Amendment's protection of privacy interests under *Katz* did not "snuff[] out the previously recognized protection for property"). Instead, both property and privacy rights are infringed upon by the warrantless search of an automobile on curtilage. *See Jardines*, 133 S. Ct. at 1419 (Kagan, J., concurring) ("It is not surprising that in a case involving a search of a home, property concepts and privacy concepts should so align."). Both types of property interests should be considered when determining whether the automobile exception extends to such Fourth Amendment searches.

III. Courts are split about whether the automobile exception applies on the defendant's private, residential property.

Whether the automobile exception applies to a vehicle located on residential private property is "a significant unresolved issue." *United States v. Goncalves*, 642 F.3d 245, 250 (1st Cir. 2011) (not resolving the issue because it was unpreserved and there was no miscarriage of justice on the facts presented).

Some courts hold that the automobile exception does not apply to vehicles parked on the defendant's private, residential property. *See, e.g., United States v. Fields*, 456 F.3d 519, 524-25 (5th Cir. 2006). Other courts hold that the automobile exception applies everywhere, even on a private driveway. *See Goncalves*, 642 F.3d at 251 (observing that the Seventh, Eighth, and Ninth Circuits "have squarely applied the automobile exception to permit searches of vehicles parked in the driveway of the defendant's own residence").

A. The Fifth Circuit, Tenth Circuit, Georgia, and Illinois require a warrant for searches like those here.

The Fifth Circuit holds the "automobile exception may not apply when a vehicle is parked at the residence of the criminal defendant challenging the constitutionality of the search." *Fields*, 456 F.3d at 524-25; *id.* at 525 ("[E]xigent circumstances are required to justify a warrantless search of a vehicle when the vehicle is parked in the driveway of a

residence."). Under the facts presented in *Fields*, however, the exception did apply, because the private property was not Fields's residence, and because the car was not parked in the driveway. *Id.* (citing *Coolidge* and *Carney*, and noting that "Fields'[s] vehicle was not parked in the driveway. Rather, Fields had crashed the car into the side of the building.").

Similarly, in *United States v. Reed*, 26 F.3d 523, 529-30 (5th Cir. 1994), the Fifth Circuit addressed a warrantless search of a car in the defendant's driveway. The court evidently rejected the simple automobile exception under those facts. Instead, the court engaged in an extensive analysis before finding exigency that supported the warrantless search. In that case, the crime was bank robbery, the officers suspected the money was in the trunk of the car—it was emitting a radio signal—and they traced the car quickly to a driveway, where much of the neighborhood turned out to observe. Concern about confederates or others with keys to the car having access to the stolen money justified the warrantless search. *Id.* at 530.

The Fifth Circuit recently reaffirmed its position that separate exigency is required to support a warrantless search of a vehicle in the defendant's driveway. *See United States v. Beene*, 818 F.3d 157 (5th Cir. 2016). In *Beene*, the Fifth Circuit carefully laid out the automobile exception and its normal application, but then observed: "when a vehicle is parked in the defendant's residential driveway, we generally require that there be exigent circumstances justifying a search." *Id.* at 164. The *Beene* court vacated and remanded the case for the district court

to determine, in the first instance, whether such exigency existed.

Similarly, the Tenth Circuit "acknowledge[s]" that the automobile exception "'may not apply when [a vehicle] is parked at the residence of the criminal defendant challenging the constitutionality of the search.'" *United States v. DeJear*, 552 F.3d 1196, 1202 (10th Cir. 2009) (quoting *Fields*, 456 F.3d at 524-25). In *DeJear*, the vehicle had been parked on residential private property. *Id.* at 1198. But the defendant did not argue that it was *his* residence. *Id.* at 1202. Thus, the automobile exception applied. *Id.*

Georgia recognizes that the automobile exception does not apply to vehicles parked on "the curtilage of a private residence." *State v. Vickers*, 793 S.E.2d 167, 170 (Ga. Ct. App. 2016). "[T]he established Georgia rule [is] that vehicles, like any other item or location within the curtilage of a residence, are not to be searched without a warrant, consent, or exigent circumstances." *Id.* at 171. Tracing to *Carney*, Georgia distinguishes the different privacy interests in "the curtilage of a private residence [from] private commercial property." *Id.* at 170. For this reason, in *Vickers* the automobile exception did not apply because the vehicle was parked in the driveway of the home of one of the defendants. *Id.* at 168-69.

Vickers is particularly apt, as the vehicle search there was on curtilage (like here). But curtilage is not even necessary in Georgia courts. Instead, what is important is that the vehicle is on private, residential property. The Georgia Supreme Court cited both *Carney* and *Coolidge* to hold that this Court's automobile exception "cases do not hold that a search

warrant is *never* needed to search a car." *State v. LeJeune*, 576 S.E.2d 888, 892 (Ga. 2003). "There is an automobile exception to the search warrant requirement, not an exemption." *Id.* at 892. "Otherwise, the Supreme Court of the United States would have held that the police would not, under any circumstances, need to obtain a search warrant for an automobile, provided they have probable cause for the search." *Id.*

Thus, in *LeJeune* the automobile exception did not apply when "the suspect's car was legally parked in his residential parking space, the suspect and his only alleged cohort were not in the vehicle or near it and did not have access to it, and the police seized the automobile without a warrant, placed it on a wrecker and hauled it away to be searched at a later date." *Id.* at 893.

Illinois also distinguishes private residential property from other property where an automobile might be parked. In *Redwood v. Lierman*, 772 N.E.2d 803, 810 (Ill. App. Ct. 2002), an individual filed a 42 U.S.C. § 1983 suit alleging that her Fourth Amendment rights were violated when a deputy "entered [plaintiff's] land, without a warrant and without her consent, and towed the van away."

The Illinois court reasoned that "[o]ne may reasonably infer that the van was sitting within the curtilage of [plaintiff's] home." *Redwood*, 772 N.E.2d at 812. This location was "crucial." *Id.* at 813. "By parking a vehicle in the driveway or yard of one's home, one brings the vehicle within the zone of privacy relating to one's home." *Id.* "In short, one's backyard is a vastly different place, for purposes of the

fourth amendment, than a public street." *Id.* The court effectively held that the automobile exception did not apply to a vehicle parked on curtilage. *Id.*

B. The Seventh, Eighth, Ninth Circuits and Alabama, as well as now Virginia, do not.

The Ninth Circuit holds "that the vehicle exception applies to a search of a vehicle parked on a private driveway." *United States v. Hatley*, 15 F.3d 856, 859 (9th Cir. 1994). In the Ninth Circuit, the automobile exception applies even when—as in *Hatley*—the vehicle is parked on the defendant's residential property. *Id.*

The Ninth Circuit adopted this rule in a case where a motor home was on private, residential driveway. *United States v. Hamilton*, 792 F.2d 837, 842-43 (9th Cir. 1986), *rev'd on other grounds by United States v. Kim*, 105 F.3d 1579, 1580-81 (9th Cir. 1997). In *Hamilton*, the Ninth Circuit asserted that although the motor home was on a "private residential drive" rather than a "public parking lot," the automobile exception still applied. *Id.* at 843 This was because the motor home "was located in a residential driveway, it had easy access to a public road." *Id.*

The Eighth Circuit also applies the automobile exception to vehicles parked on private residential property. *United States v. Blaylock*, 535 F.3d 922, 926-27 (8th Cir. 2008); *see also id.* at 928-29 (Melloy, J., concurring) (suggesting that the court was expressly confronted with the argument that the automobile exception does not apply on private residential property). In *Blaylock*, the vehicle parked on the

defendant's residential driveway was searched. *Id.* at 925. The Eighth Circuit held that this search was subject to the automobile exception. *Id.* at 926-27.

The Eighth Circuit held, essentially, that the lowered expectation of privacy in vehicles overcomes heightened expectations of privacy associated with private, residential property. *Id.*; *see also id.* at 929 (Melloy, J., concurring) (opining that a warrantless search of a vehicle on residential property might be "antithetical" to *Carroll*, but it is permitted under the modern "expansive reading" of the automobile exception).

The Seventh Circuit has joined the Eighth and Ninth Circuits. *See, e.g.*, *United States v. Hines*, 449 F.3d 808, 810-15 (7th Cir. 2006) (automobile exception justified warrantless search of van on driveway to defendant's home).

Alabama "agree[s] with those jurisdictions cited above that have held that the automobile exception applies to vehicles located on private property without any additional exigency requirement." *Harris v. State*, 948 So.2d 583, 597 (Ala. Ct. Crim. App. 2006). The automobile exception applies even if the vehicle is parked in the curtilage of the home. *Id.* at 596-97. Thus, in *Harris*, a search of a vehicle parked behind a mobile home was subject to the automobile exception. *Id.* at 586, 597.

The *Harris* court engaged in a lengthy discussion of lower courts' treatment of Fourth Amendment law. *Id.* at 588-97. Distilled, the court recognized the two justifications—ready mobility and lowered expectations of privacy—for the automobile

exception. *Id.* at 589-90. Citing *Maryland v. Dyson*, the court reasoned the automobile exception has no "public property" element. *Id.* at 590-91. The court concluded that the justifications for the automobile exception do not change with the location of the vehicle, and so a vehicle on private property can be searched on probable cause alone. *Id.* at 597.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 21, 2017

APPENDIX

APPENDIX

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APPENDIX A

SUPREME COURT OF VIRGINIA

Record No. 151277

[Filed September 15, 2016]

RYAN AUSTIN COLLINS	)
	)
v.	)
	)
COMMONWEALTH OF VIRGINIA	)
	)

FROM THE COURT OF APPEALS OF VIRGINIA

PRESENT: Lemons, C.J., Goodwyn, Mims, *McClanahan, Powell, and Kelsey, JJ., and Millette,* S.J.

OPINION BY
CHIEF JUSTICE DONALD W. LEMONS

In this appeal, we consider whether the Court of Appeals erred in affirming the judgment of conviction upon consideration of the trial court's denial of a motion to suppress evidence obtained when police conducted a warrantless search of a stolen motorcycle parked in the driveway of a home where Ryan Austin Collins ("Collins") resided.

I. Facts and Proceedings

Collins was convicted in the Circuit Court of Albemarle County ("trial court") of receiving stolen

property in violation of Code § 18.2-108, and sentenced to three years' imprisonment with all but two months suspended. Prior to trial, Collins moved to suppress the Commonwealth's evidence linking him to a stolen motorcycle. The trial court denied Collins' motion to suppress and held that the police search, although conducted without a warrant, did not violate the Fourth Amendment. The Court of Appeals affirmed the trial court's ruling and Collins now challenges that decision.

A. The Eluding Incidents

On June 4, 2013, Officer Matthew McCall of the Albemarle County Police Department was patrolling on Route 29 near the border of Albemarle County and the City of Charlottesville when he observed a traffic infraction by the operator of an orange and black motorcycle with an extended frame. Officer McCall activated his emergency lights and attempted to stop the motorcycle, but the motorcycle eluded him at a high rate of speed.

Several weeks later, on July 25, 2013, Officer David Rhodes, also of the Albemarle Police Department, was in his police car on the Route 250 Bypass when he observed an orange and black motorcycle traveling at 100 miles per hour in a 55 mph zone. Officer Rhodes engaged his emergency equipment and pursued the motorcycle. Instead of stopping, the motorcyclist increased his speed to at least 140 mph and sped away from the police car. In the interest of safety, Officer Rhodes abandoned his pursuit. However, Officer Rhodes' police car video camera recorded the incident, and police were able to use this footage to obtain a still

photograph of the motorcycle, including its license plates.

The motorcycle was an orange and black Suzuki with chrome accents and a "stretched out" rear wheel, indicating that it had been modified for drag racing. Officer Rhodes could not identify the driver through the darkly tinted helmet, but he observed that the motorcyclist wore blue jeans and "tan Timberland-type work boots." The motorcyclist who eluded Officer McCall two months earlier also wore jeans and "Timberland-type-style boots." After comparing notes and identifying "an awful lot of similarities" between the two eluding incidents, Officers McCall and Rhodes concluded the same motorcyclist had eluded each of them.

When Officer Rhodes entered the motorcycle's license plate number in a police database, he discovered that the tags were "not on file" and had been inactive for several years. The license plate was most recently registered to Eric Jones ("Jones"). In the course of his investigation, Officer Rhodes learned that Jones had sold the motorcycle to Collins before the eluding incidents. Later, at trial, Jones testified that he sold Collins the motorcycle in April 2013 with the caveat that the motorcycle lacked title and was stolen.

> [COMMONWEALTH'S ATTORNEY]: And so do you know why [the motorcycle] didn't have a title?
>
> [ERIC JONES]: Possibly stolen.
>
> Q: Possibly stolen or you knew it was ...
>
> A: Yeah, yeah, it was stolen.

Q: It was stolen[?]

A: Yeah.

....

Q: And did you at some point then sell it to someone?

A: Yeah.

Q: And who did you sell to?

A: Sold it to Ryan.

Q: And who is Ryan? Do you know his last name?

A: Collins.

....

Q: All right, and when you sold it to Ryan Collins, did you tell him about the problem with the motorcycle, about it being stolen?

A: Yeah, I did.

Q: And did you talk to him about the fact that it didn't have a title?

A: Yeah.

B. The Search

On September 10, 2013, Albemarle Police responded to the Department of Motor Vehicles ("DMV") to investigate an unrelated matter[1] involving Collins.

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[1] The record indicates that police arrived at the DMV after receiving a report that Collins was attempting to register a stolen vehicle (a silver Acura sedan). Collins had allegedly forged the title to the Acura in an attempt to reduce the taxes on the vehicle,

Upon hearing Collins' name on the police radio, Officers Rhodes and McCall also responded to the DMV to question Collins since he was a suspect in the motorcycle eluding incidents. Officer McCall advised Collins of his *Miranda* rights, and Collins agreed to speak to the officers. When questioned about the motorcycle, Collins denied knowing anything about it, and told the officers that he "hadn't ridden a motorcycle in months." Meanwhile, Officer Rhodes searched a social media website (Facebook) and found two photographs posted on Collins' Facebook page depicting the motorcycle which appeared to have been involved in the eluding incidents. The photographs showed the orange and black motorcycle parked in a driveway next to the vehicle Collins was attempting to register at the DMV.

Officer Rhodes later testified that upon seeing the photographs of the motorcycle on Collins' Facebook page, he "knew 100% sure that . . . was the same motorcycle that had not stopped for me on the bypass based on looking at it. It was very distinct and I knew, absolutely no question in my mind that was the same motorcycle." However, when the officers showed Collins the Facebook photographs, Collins denied any knowledge of the motorcycle or the house depicted in the photographs.

After the questioning concluded, Collins left the DMV and the officers continued their investigation. Officer Rhodes learned from an informant that the house in the Facebook photograph was located on

---

but the forgery charge was subsequently dismissed and is not relevant to this appeal.

Dellmead Lane in the City of Charlottesville near the border of Albemarle County. Less than half an hour later, Officer Rhodes located the house and parked along the street. From his position on the street, Officer Rhodes could see what appeared to be a motorcycle covered with a white tarp. At trial, Officer Rhodes testified that "a quarter of the wheel [was] sticking out from underneath the cover" and that despite the tarp, he recognized the distinct chrome accents and "stretched out" shape of the motorcycle. Additionally, the location and angle of the partially covered motorcycle matched that of the motorcycle in Collins' Facebook photographs.

Officer Rhodes then walked onto the property, "a car length or two" up the driveway, between the street and the front steps of the house. While standing on the driveway, Officer Rhodes uncovered the motorcycle and confirmed that it appeared to be the same orange and black Suzuki that had eluded him on July 25, 2013. He then recorded the motorcycle's vehicle identification number or "VIN." A computer search of the VIN revealed the motorcycle had been "stolen out of New York" several years before. After gathering this information, Officer Rhodes re-covered the motorcycle, left the property, and returned to his police car to conduct surveillance and wait for Collins.

Shortly thereafter, a vehicle dropped off Collins at the Dellmead Lane residence. Officer Rhodes returned to the house and knocked on the door, which Collins answered. Although it was "over 90 [degrees] that day," Collins came to the door dressed in jeans, a sweatshirt, and Timberland-style boots. Officer Rhodes later testified that "at the DMV 30 minutes

prior" Collins had been wearing "shorts and flip flops and a t-shirt." When asked about the motorcycle, Collins initially said he "didn't know anything about it." He then told Officer Rhodes it belonged to a friend. Eventually, Collins admitted that he purchased the motorcycle, without a title, from Eric Jones. At trial during direct examination by the Commonwealth's Attorney, Officer Rhodes recounted his conversation with Collins:

> [COMMONWEALTH'S ATTORNEY]: [T]ell the judge, please, when [Collins] comes to the door what happened next?
>
> [OFFICER RHODES]: I asked him, I said do you mind if I speak with you, and he said sure. We came. . . outside, and I started inquiring about the motorcycle. I asked him [if] he knew about this motorcycle, [and] he told me he didn't know anything about it, it was a friend's. . . . [Collins] then told me "well I did ride it over, bring it over from my mom's, over in Northfield over to Dellmead Avenue, but that had been a while and I don't ever drive it, because I don't have a motorcycle license."
>
> ....
>
> Q: Did he tell you then, ultimately, whose motorcycle it was?
>
> A: He told me it was ... it was his. He told me ultimately he had bought it, he had paid $3,500 to Eric Jones for the motorcycle, and that's where the tag comes back into play ... which corroborated that story that that tag had involvement with Eric Jones....

> Q: [Collins] bought the motorcycle from Eric Jones?
>
> A: [Yes, t]he motorcycle from Eric Jones, and [Collins] had paid $3,500 for it, and there was no title for the motorcycle.

Officer Rhodes then arrested Collins for receiving stolen property. As he searched Collins incident to the arrest, Officer Rhodes discovered a key to the motorcycle in Collins' pocket.

C. Collins' Motion to Suppress

A grand jury indicted Collins for possession of stolen property, in violation of Code § 18.2-108. Collins moved to suppress the evidence obtained by Officer Rhodes on Fourth Amendment grounds. Collins argued:

> What we're really talking about here is trespassing on real property. Trespassing on the curtilage of a home for the purposes of doing investigation. I would conclude that Officer Rhodes violated the law in trespassing on private property. It was for the purpose of the search. He has no probable cause to do so. He certainly had no exigent circumstances. And any information that he gained as a result of that illegal trespass including [the] VIN number [should be suppressed].

The Commonwealth responded:

> Your Honor, while there is a Constitutional Fourth Amendment action against a [un]reasonable search and seizure, Mr. Collins'

> arguments are misguided. The search that Officer Rhodes conducted of the orange motorcycle [on] September 10th, 2013 was reasonable and lawful. The Supreme Court has long recognized an automobile exception to the traditional requirement of probable cause in a warrant. In *Carroll v. United States*, the Court concluded that automobiles were readably mobile and therefore eas[ily] moved from a jurisdiction. Probable cause alone is enough to justify a search and a warrant is unnecessary. The Supreme Court confirmed this in *Maryland v. Dyson* ...where the [Court] explicitly ruled that warrantless search of a vehicle [was] lawful within the Fourth Amendment.

The Commonwealth's Attorney further argued that Officer Rhodes had probable cause because he had seen on Collins' Facebook page, a photograph of the uncovered motorcycle parked in the same spot in front of the house. Additionally, the motorcycle had chrome wheels and an extended sway arm[2] which made it longer than a standard motorcycle. In response, Collins argued that the automobile exception was inapplicable since the motorcycle was parked and located on private property.

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[2] An extended sway arm, or swingarm, refers to the part of a sport motorcycle to which the rear wheel is attached, making it project further behind the operator's seat than normal so as to give the motorcycle a longer overall wheelbase and lower profile. Frequently, it is also used to equip a sport motorcycle with a wider rear tire.

> Your Honor, the automobile exception to my understanding is the search of the automobile not a search for an automobile... [The] [a]utomobile exception was created for officers on the street when they stop somebody and they know there is going to be maybe contraband in the vehicle and it's an exception to a warrant requirement. That exception does not apply in this case. That vehicle was parked in a private driveway.

After hearing argument from both parties, the trial court ruled on Collins' motion. The trial court held that Officer Rhodes did not violate Collins' Fourth Amendment rights.

> So the Court finds that ... where this is in an area where it is exposed to the public where the officer asked Mr. Collins about the motorcycle and [Collins] indicated he didn't know anything about it, where it's in the exact same location [as the Facebook photograph], where it matches the officer's description ... and where it has the chrome wheels, the Court finds that there was probable cause for the search and therefore it was not an unreasonable governmental intrusion. The Court is going to deny the motion to suppress.

A bench trial ensued, and the trial court convicted Collins of receiving stolen property.

D. Court of Appeals Opinion

Collins appealed his conviction to the Court of Appeals. The Court of Appeals affirmed Collins' conviction in a published opinion. *Collins v.*

Commonwealth, 65 Va. App. 37, 773 S.E.2d 618 (2015). The Court of Appeals held that Officer Rhodes "unquestionably had probable cause to believe the motorcycle was the one from the eluding incident." *Id.* at 44, 773 S.E.2d at 622. The Court of Appeals also concluded that Officer Rhodes' warrantless search was justified under the exigent circumstances exception to the Fourth Amendment's warrant requirement. *Id.* at 46-48, 773 S.E.2d at 623-24. The Court of Appeals declined to address the automobile exception on the basis that other "exigencies existed aside from the inherent mobility of the motorcycle." *Id.* at 48 n.4, 773 S.E.2d at 624 n.4. Upon petition we granted Collins' appeal on the following assignment of error:

> The trial court erred in denying Collins' motion to suppress the evidence related to the motorcycle because the officer illegally trespassed onto private property for [the] purpose of conducting a search in violation of his Fourth Amendment right to be free of unreasonable searches and seizures. The Court of Appeals of Virginia erred in upholding the judgment of the trial court and finding that the officer acted lawfully under the Fourth Amendment in entering the property and searching the motorcycle.

II. Analysis

A. Standard of Review

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A defendant's claim

that evidence was seized in violation of the Fourth Amendment presents mixed questions of law and fact that this Court reviews de novo on appeal. *Jones v. Commonwealth*, 277 Va. 171, 177, 670 S.E.2d 727, 731 (2009). The Court gives deference to the trial court's factual findings, but will independently determine whether the manner in which evidence was obtained meets the requirements of the Fourth Amendment. *Id.* Moreover, "[t]he defendant bears the burden of establishing that the denial of his suppression motion was reversible error." *Glenn v. Commonwealth*, 275 Va. 123, 130, 654 S.E.2d 910, 913 (2008).

B. Automobile Exception to the Fourth Amendment Warrant Requirement

Before the Court of Appeals and before this Court, Collins argued that Officer Rhodes trespassed when he walked up the driveway of Collins' residence without permission or a search warrant. Collins also argued that Officer Rhodes conducted a warrantless, unconstitutional search when he removed the motorcycle tarp to reveal its VIN–evidence which ultimately confirmed that the motorcycle was stolen. While the Court of Appeals analyzed the issue based upon probable cause and exigent circumstances, this case is more appropriately resolved under the automobile exception.

In this case, Officer Rhodes lacked a search warrant when he walked up Collins' driveway and searched the motorcycle by removing the tarp and locating the VIN. "Warrantless searches, of course, are per se unreasonable, subject to a few well-defined exceptions." *Abell v. Commonwealth*, 221 Va. 607, 612, 272 S.E.2d 204, 207 (1980); *see also Katz v. United States*, 389

U.S. 347, 357 (1967). These narrowly delineated exceptions include: consent,[3] search incident to a lawful arrest,[4] plain view,[5] and exigent circumstances.[6] We have recognized several common examples of exigent circumstances such as hot pursuit, the imminent destruction of evidence, and the possibility of danger to others. *Verez v. Commonwealth*, 230 Va. 405, 410, 337 S.E.2d 749, 752-53 (1985). In this case, however, neither the Commonwealth nor the trial court invoked the exigent circumstances exception. Although the Court of Appeals based its decision on exigent circumstances, we do not find it necessary to independently assess whether exigent circumstances existed here. Rather, the facts of this case are more

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[3] *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) ("It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.").

[4] *See Morris v. Commonwealth*, 208 Va. 331, 334, 157 S.E.2d 191, 194 (1967) ("[W]here incident to a valid arrest," officers may lawfully search and seize personal effects without a search warrant.") (citing *United States v. Jeffers*, 342 U.S. 48, 51 (1951)).

[5] *See Jones v. Commonwealth*, 279 Va. 665, 672, 691 S.E.2d 801, 804 (2010) (under the "plain view" doctrine, officers who are lawfully present on a property but who lack a search warrant may nonetheless seize items which are in plain view and immediately incriminating).

[6] If there is both an exigency and sufficient probable cause to believe a crime has occurred, police may conduct a lawful search even absent a warrant. *See Verez v. Commonwealth*, 230 Va. 405, 410, 337 S.E.2d 749, 752-53 (1985) (citing *Payton v. New York*, 445 U.S. 573 (1980)).

properly addressed by a different exception to the warrant requirement: the automobile exception.

The origins of the automobile exception reflect the inherent exigency associated with the readily mobile nature of vehicles. *See Pennsylvania v. Labron*, 518 U.S. 938. 940 (1996) ("Our first cases establishing the automobile exception to the Fourth Amendment's warrant requirement were based on the automobile's ready mobility, an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear."). Nonetheless, the Supreme Court of the United States has expressly held that the automobile exception is a distinct and independent exception to the warrant requirement.

> The Fourth Amendment generally requires police to secure a warrant before conducting a search. As we recognized nearly 75 years ago in *Carroll v. United States*, 267 U.S. 132, 153 (1925), there is an exception to this requirement for searches of vehicles. And under our established precedent, the "automobile exception" has no separate exigency requirement. We made this clear in *United States v. Ross*, 456 U.S. 798, 809 (1982), when we said that in cases where there was probable cause to search a vehicle "a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained."

Maryland v. Dyson, 527 U.S. 465, 466-67 (1999) (internal citations omitted). The Supreme Court has articulated a simple, bright-line test for the automobile exception: "[i]f a car is readily mobile and probable

cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Id.* at 467 (citing *Labron*, 518 U.S. at 940). Applying that test to this case, we hold that Officer Rhodes' warrantless search of the motorcycle was justified under the automobile exception to the warrant requirement of the Fourth Amendment.

1. Officer Rhodes Had Probable Cause to Believe the Motorcycle Was Contraband

The facts of this case supported a finding of probable cause sufficient to allow Officer Rhodes to search the motorcycle under the automobile exception. As a result of his prior investigation, Officer Rhodes had several reasons to believe the motorcycle was contraband. Eric Jones had informed Officer Rhodes that he sold Collins the motorcycle with the warning that it was stolen. Therefore, when he arrived at the Dellmead Lane residence on September 25, 2013, Officer Rhodes already suspected that the motorcycle which had eluded him and Officer McCall was stolen property. The motorcycle was in plain view from the street and Officer Rhodes immediately recognized its distinct features. In denying Collins' motion to suppress, the trial court found that, despite the tarp, the motorcycle's unique "stretched out" frame and chrome wheels were visible to Officer Rhodes from his lawful position on the street. The location and angle of the partially covered motorcycle matched that of the uncovered motorcycle in Collins' Facebook photograph. Accordingly, both the trial court and the Court of Appeals properly held that Officer Rhodes had probable cause to search the motorcycle.

2. Automobile Exception Applies Even When Vehicle is Not "Immediately Mobile"

On brief Collins argued that "no reasonable law enforcement officer could claim that, under these facts, the motorcycle was in imminent danger of being destroyed." (Opening Br. at 30). He further argued:

> Had Collins emerged from the residence, removed the tarp and attempted to drive the motorcycle away, Officer Rhodes would have had clear evidence linking Collins to the motorcycle and could have immediately approached him to further investigate the suspected incident of eluding.

(Opening Br. at 28). Collins contends that because Officer Rhodes was conducting surveillance of the residence, Collins could not have removed the tarp, started the motorcycle, and fled the premises without first being apprehended. He suggests that Officer Rhodes could have stopped the motorcycle by blocking the driveway with his police car.

These arguments both defy common sense and misapply the automobile exception, which is a bright-line test. The suggestion that Officer Rhodes could have "immediately approached [Collins] to further investigate" conveniently ignores the fact that this motorcycle had twice eluded police at high speeds. And, since he had questioned Collins about the motorcycle earlier that same day, Officer Rhodes had good reason to suspect that Collins would return from

the DMV and speed away on the motorcycle in order to hide it and potentially remove the VIN.[7]

Moreover, "[a] vehicle's inherent mobility—not the probability that it might actually be set in motion—is the foundation of the automobile exception's mobility rationale." *United States v. Smith*, 456 Fed. Appx. 200, 209 (4th Cir. 2011). The Fourth Circuit in *Smith* held that:

> [T]he mobility rationale does not turn on case-by-case determinations by agents in the field regarding either the probability that a vehicle could be mobilized or the speed with which movement could be achieved.

Id. (citing *United States v. Navas*, 597 F.3d 492, 498-500 (2d Cir. 2010) (under the automobile exception, police were permitted to search a trailer even though it

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[7] Regardless of whether it was "immediately mobile" at the precise moment of the search, the motorcycle and its rider nonetheless posed a significant flight risk. For example, in the short time between his DMV encounter with police and his interaction with Officer Rhodes on the doorstep of the Dellmead Lane residence, Collins changed from flip flops and shorts into boots, jeans, and a sweatshirt. Generally, a Fourth Amendment analysis is not a retrospective review and we are only concerned with those "facts known to the officer at the time" [of the search]. *Sidney v. Commonwealth*, 280 Va. 517, 525, 702 S.E.2d 124, 129 (2010). However, as the Court of Appeals noted below, the fact that Collins had changed into motorcycle clothes and had the key in his pocket "further speak[s] to the reasonableness of Officer Rhodes' belief that ... [Collins] not only possessed an interest in, but also the ability and probable intention to move the motorcycle out of the reach of law enforcement." *Collins*, 65 Va. App. at 47, 773 S.E.2d at 623.

was unattached from the tractor trailer cab)). Furthermore, the Supreme Court has expressly held that individuals enjoy a "lesser degree of protection" with respect to their privacy interests in automobiles. *California v. Carney*, 471 U.S. 386, 390 (1985); *see also Missouri v. McNeely*, 569 U.S. ___, 133 S. Ct. 1552, 1565 (2013) ("[P]eople are accorded less privacy in automobiles because of the compelling governmental need for regulation.") (citing *Carney*, 471 U.S. at 392).

> [A]lthough ready mobility alone was perhaps the original justification for the vehicle exception, our later cases have made clear that ready mobility is not the only basis for the exception ... Even in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception.

Carney, 471 U.S. at 391 (citing *Cady v. Dombrowski*, 413 U.S. 433, 441-42 (1973) (recognizing the automobile exception even in cases where the "possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not nonexistent")).

Consequently, in this case, we need not decide whether the motorcycle was immediately mobile at the precise moment of the search. The bright-line test does not require us to hypothesize whether it would have been technically possible for Collins to uncover the motorcycle, start the engine, and flee from Officer Rhodes. *See McCary v. Commonwealth*, 228 Va. 219, 228, 321 S.E.2d 637, 642 (1984) (the automobile exception applies "even if there is no risk of removal of the vehicle or its contents"). The mere fact that the

stolen motorcycle was "clearly operational and therefore readily movable" governs our decision. *United States v. Brookins*, 345 F.3d 231, 237 (4th Cir. 2003).

3. Automobile Exception May Apply to Vehicles Parked on Private Property

During the suppression hearing, Collins argued that the automobile exception does not apply to a vehicle parked in a private driveway. The trial court did not consider this question, but the Court of Appeals addressed the issue and appeared to agree with Collins. In a footnote, the Court of Appeals implied that the automobile exception does not apply to the search of a vehicle on private property.[8] *See Collins v. Commonwealth*, 65 Va. App. at 48 n.4, 773 S.E.2d at

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[8] Footnote 4 of the Court of Appeals' opinion stated:

> We note that the United States Supreme Court has suggested that a search of a vehicle on private property requires more than mere mobility, as is generally sufficient under the automobile exception. *Coolidge v. New Hampshire*, 403 U.S. 443, 460 (1971) (plurality opinion) (stating that "'exigent circumstances' justify the warrantless search of 'an automobile stopped on the highway,' where there is probable cause, because the car is 'movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained'" (quoting *Chambers v. Maroney*, 399 U.S. 42, 51 (1970))); *see also California v. Carney*, 471 U.S. 386, 392-93 (1985) (discussing the automobile exception's relevance "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes . . ." (emphasis added)). Here, we need not rely on the automobile exception, for exigencies existed aside from the inherent mobility of the motorcycle.

624 n.4. (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 460 (1971) (plurality opinion) and *California v. Carney*, 471 U.S. 386, 392-93 (1985)). However, the Court of Appeals misconstrued the automobile exception when it unnecessarily restricted its application to vehicles stopped on public highways. The Supreme Court has never limited the automobile exception such that it would not apply to vehicles parked on private property. Our Court has held that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view. *See Thims v. Commonwealth*, 218 Va. 85, 93, 235 S.E.2d 443, 447 (1977).

The Court of Appeals cited *Coolidge v. New Hampshire* and *California v. Carney* but those cases did not distinguish the automobile exception on a public roadway versus on a private driveway. Instead, the Supreme Court in *Carney* extended the automobile exception to a "fully mobile motor home" parked in a lot[9] and held that no search warrant was necessary so long as police had probable cause to believe the vehicle contained contraband. 471 U.S. at 393. The Court focused on the mobile characteristics rather than the exact location of the motor home. *Id.*

> First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed

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[9] The Supreme Court's opinion in *California v. Carney* did not specify whether the San Diego parking lot where the defendant had parked his "fully mobile motor home" was a public facility or a privately owned lot. 471 U.S. at 388.

> motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.

Id.

Similarly, the Court of Appeals' reliance on *Coolidge* is misguided.

> Although heightened privacy interests may be triggered when a vehicle is encountered on private property, the *Coolidge* plurality opinion cannot be fairly read to create a bright-line rule precluding warrantless searches on private property under all circumstances.

Brookins, 345 F.3d at 237. *Brookins* involved a motion to suppress narcotics evidence discovered when police, without a warrant, searched a car which was parked on a private driveway in Suffolk, Virginia. *Id.* In that highly analogous case, the United States Court of Appeals for the Fourth Circuit rejected the district court's application of a "bright-line rule, whereby the automobile exception may never apply when a vehicle is stationed on private, residential property." *Id.* In *Brookins*, an individual suspected of selling crack cocaine "fled the scene in [a] Ford Expedition." *Id.* at 234. Police later observed the Ford Expedition parked in the driveway of a private residence, and they walked onto the property to conduct a search which revealed drug paraphernalia. *Id.*

Just as the police in *Brookins* discovered contraband when they searched the Ford Expedition on private

property, Officer Rhodes also discovered contraband when he searched the motorcycle parked at Collins' residence. By lifting the tarp and discovering the VIN, Officer Rhodes verified that the motorcycle was indeed stolen, and therefore constituted contraband. Accordingly, we hold that Officer Rhodes' search of the motorcycle was permissible under the automobile exception.

The dissent contends that "Officer Rhodes did not search the motorcycle, he searched the tarp." This argument ignores the fact that Officer Rhodes' stated purpose in lifting the tarp was not to determine whether the tarp covered a motorcycle, but rather to verify the identity of the partially covered motorcycle and record its VIN. At the suppression hearing, Officer Rhodes testified that "to determine if this was the motorcycle that I was, in fact, looking for . . . . I removed the cover then I ran the tag on that motorcycle . . . . I got the VIN number off the motorcycle and then ran that as well." The dissent plainly acknowledges that "the shape and contours of the object were visible through the tarp and suggested the object it covered was an extended motorcycle . . . . the lower half of the front wheel of the motorcycle was exposed to view outside the tarp." Consequently, Officer Rhodes knew that the object being searched was a motorcycle partially covered by a tarp.

The dissent argues that the Commonwealth characterized the search as one of the tarp. However, the very first sentence uttered by the Commonwealth's Attorney during the suppression hearing described Officer Rhodes' actions as a search of the motorcycle.

> The search that Officer Rhodes conducted of the orange motorcycle September 10th, 2013 was reasonable and lawful. The Supreme Court has long recognized an automobile exception to the traditional requirement of probable cause [and] a warrant.

At trial and on appeal Collins has never specifically challenged Officer Rhodes' uncovering of the tarp as a distinct search. Instead, Collins has consistently characterized Officer Rhodes' conduct as an "illegal trespass" which revealed the motorcycle's VIN. In his brief to this Court Collins maintained that:

> Officer Rhodes trespassed onto private property. . . . , physically removed the tarp from the motorcycle[,] and *conducted a search of the motorcycle*.

(Opening Br. at 13-14) (emphasis added). Additionally, the defendant's own characterization of the issue is found in his argument that "[t]he Court of Appeals erred in holding that exigent circumstances justified the officer's warrantless entry onto the property and *the search of the motorcycle*." *Id.* at 24 (emphasis added).

The dissent relies on *New York v. Class*, 475 U.S. 106 (1986). In that case, the United States Supreme Court considered whether a police officer violated the Fourth Amendment when, without a warrant, he searched a car by moving paperwork on the dashboard to verify a VIN.[10] The Court in *Class* held that:

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[10] "In *Class*, the Supreme Court determined that in light of the important role VIN's play in the pervasive governmental

> We think it makes no difference that the papers in respondent's car obscured the VIN from the plain view of the officer. We have recently emphasized that efforts to restrict access to an area do not generate a reasonable expectation of privacy where none would otherwise exist.

Id. at 114 (citing *Oliver v. United States*, 466 U.S. 170, 182-84 (1984)). Just like the police officer in *Class* who removed papers from the dashboard for the purpose of obtaining the VIN, here Officer Rhodes removed the tarp in order to reveal the VIN on a motorcycle he believed to be linked to criminal activity. The defendant in *Class* challenged the search of the car, not the search of the papers on the dashboard. *Id.* Likewise, in this case, Collins challenged the search of the motorcycle, not the search of the tarp.[11]

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regulation of automobiles, a 'motorist must surely expect that . . . regulation will on occasion require the State to determine the VIN of his or her vehicle.' [475 U.S.] at 113. This fact, coupled with the diminished expectation of privacy inherent in automobiles generally, led the Supreme Court to hold that there is no reasonable expectation of privacy in a VIN." *State v. Geissler*, 11 P.3d 1120, 1122 (Idaho Ct. App. 2000) (citing *Class*, 475 U.S. at 114).

[11] When a police officer lifts a tarp and reveals contraband, courts typically describe the search as a search of the contraband rather than a search of the tarp itself. Several cases from other jurisdictions help to illustrate this point.

In *State v. Allen*, 166 P.3d 111 (Ariz. Ct. App. 2007), a police officer investigating a hitand-run involving a red car came upon a red coupe that was partially covered by a tarp. The officer lifted the cover and observed damage to the vehicle consistent with the accident. *Id.* at 112. The defendant later moved to suppress the

C. Right Result for a Different Reason

"An appellate court may properly affirm a judgment appealed from where the court from which the appeal was taken reached the correct result but assigned a different reason for its holding." *Rives v. Commonwealth*, 284 Va. 1, 2, 726 S.E.2d 248, 250 (2012). The "right result for the wrong [or different] reason" doctrine is only applicable where the "right reason" can be fully supported by the evidence in the

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evidence of the damage to his vehicle. *Id.* The Arizona Court of Appeals held that lifting the car cover did not constitute an unlawful *search of the vehicle* under the Fourth Amendment. "The lifting of the car cover to view the exterior of the vehicle . . . did not invade any reasonable expectation of privacy." *Id.* at 117.

Similarly, in *State v. Tegland*, 344 P.3d 63 (Or. Ct. App. 2015), a homeless defendant was living in a shelter he built using a grocery cart, a wooden pallet and multiple tarps. *Id.* at 65. Police lifted up the tarp and discovered methamphetamine paraphernalia. *Id.* The trial court denied the defendant's motion to suppress in which he challenged the search of his "residence." *Id.* at 65-66. The Oregon Court of Appeals affirmed, characterizing the search as a lawful search of the interior of the defendant's makeshift residence–not a search of the tarp itself. *Id.* at 68-69.

See also United States v. Rosado, 1994 U.S. Dist. LEXIS 8617, at *12 (S.D.N.Y. June 27, 1994) (unpublished) (citing *New York v. Class*, 475 U.S. at 114) ("The placement of the tarp on defendant's car was insufficient to create a privacy interest in the license plate number, which like the VIN, is an identifying characteristic needed for the government to regulate and identify automobiles."); *State v. Emmons*, 386 N.E.2d 838, 842, 844-45 (Ohio Ct. App. 1978) (under the automobile exception set forth in *Carroll v. United States*, detectives were justified in "examining movable personal property" by lifting tarps covering two stolen motorcycles parked in a private driveway despite having no search warrant or consent to search).

record and where the development of additional facts is unnecessary to support it. *Perry v. Commonwealth*, 280 Va. 572, 579-80, 701 S.E.2d 431, 435-36 (2010). Recently, in *Ricks v. Commonwealth*, 290 Va. 470, 480, 778 S.E.2d 332, 336-37 (2015), we affirmed a decision by the Court of Appeals to reverse a defendant's conviction even though we articulated an entirely different rationale.

Here, the facts necessary to resolve this case under the automobile exception to the warrant requirement of the Fourth Amendment were established in the record before the trial court. Therefore, Officer Rhodes' search of the motorcycle was justified and we will affirm the judgment of conviction as "the right result for a different reason."

III. Conclusion

For the reasons stated, we will affirm the judgment of the Court of Appeals.

Affirmed.

JUSTICE MIMS, dissenting.

The majority holds that Officer Rhodes' search was permitted under the automobile exception to the Fourth Amendment's warrant requirement. However, Officer Rhodes did not search an automobile, he searched a tarp. I therefore must respectfully dissent.

The majority accurately recounts the relevant facts. Officer Rhodes went to a house shown in Collins'

Facebook photograph.[1] There, Officer Rhodes saw from the public street an object covered by a white tarp on the paved driveway running alongside the front yard. The shape and contours of the object were visible through the tarp and suggested that the object it covered was an extended motorcycle similar to the one he had attempted to stop a few weeks earlier. The lower half of the front wheel of the motorcycle was exposed to view outside the tarp and its features were also similar to those of the motorcycle he had attempted to stop. Officer Rhodes then entered the driveway, approached the motorcycle parked beside the house, removed the tarp, and exposed the vehicle identification number. Using the vehicle identification number, Officer Rhodes learned that the motorcycle was stolen and arrested Collins.

The majority holds that Officer Rhodes' warrantless search was permitted by the automobile exception. However, the automobile exception permits a warrantless search *of* a vehicle, not *for* a vehicle. *See Maryland v. Dyson*, 527 U.S. 465, 466 (1999) ("The Fourth Amendment generally requires police to secure a warrant before conducting a search. As we recognized nearly 75 years ago . . . , there is an exception to this requirement for searches *of* vehicles." (internal citations omitted) (emphasis added)). As the majority notes, the automobile exception, distilled to its essence, provides that "[i]f a car is readily mobile and probable cause exists to believe it *contains* contraband, the Fourth Amendment . . . permits police to search the

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[1] The house was later established to be the home of Kandace Beach, Collins' girlfriend and the mother of his child, where Collins occasionally stayed overnight.

vehicle without more." *Id.* at 467 (internal quotation marks omitted) (ellipsis in original) (emphasis added). The motorcycle did not *contain* contraband, it *was* contraband; Officer Rhodes did not search the motorcycle, he searched the tarp.

Although the majority repeatedly says that Officer Rhodes "searched the motorcycle" and merely "remov[ed]" or "lift[ed]" the tarp, *supra* at 9, 16, the tarp was the only thing searched. Searching the tarp revealed the motorcycle. Once the motorcycle was exposed by searching the tarp, examining the motorcycle's vehicle identification number was not a search because vehicle identification numbers are not protected by the Fourth Amendment. *New York v. Class*, 475 U.S. 106, 113-14 (1986) (holding that there is no reasonable expectation of privacy in a vehicle identification number, which is required by law to be in public view while the vehicle is being operated). "The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a 'search.'" *Id.* at 114.[2] In short, it does not matter that the motorcycle is a vehicle, because it was not searched. Accordingly, the automobile exception to the warrant requirement does not apply here.[3]

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[2] The vehicle in *Class* had been stopped for being driven "above the speed limit [and] with a cracked windshield." 475 U.S. at 108. Unlike the vehicle in *Class*, the motorcycle here was parked in a private driveway rather than being operated on a public highway, and its exterior was not "thrust into the public eye" but was concealed from the public eye–by the tarp.

[3] Although the majority opinion says Collins did not challenge the search of the tarp, that statement is contradicted by the record. At the hearing on Collins' motion to suppress, the Commonwealth

There is no question that Officer Rhodes was entitled to observe whatever he could see from the street. *California v. Ciraolo*, 476 U.S. 207, 213 (1986) ("The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on

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characterized the search as one of the tarp: "The removal of the tarp covering the motorcycle was lawful under the [Fourth] Amendment and the information gained from the removal should not be suppressed." Collins responded seconds later by arguing that "the automobile exception . . . is the search *of* the automobile not a search *for* an automobile." (Emphases added.)

The distinction is readily apparent. If a police officer lawfully stops a known felon and sees a pistol-shaped bulge in the pocket of a coat he is carrying and the grip of a pistol protrudes from the opening, the search that will ensue is one *of the coat*, not *of the pistol*, even if the search of the coat is *for* the pistol and a purpose of the search is to obtain the pistol's serial number, which replicates an automobile's vehicle identification number in this example. 18 U.S.C. § 923(i) (requiring all licensed firearms manufacturers or importers to engrave or cast a serial number on the receiver or frame of a firearm); 27 C.F.R. § 478.92(a)(1)(i) (specifying visibility requirements for such serial numbers); *see also New Jersey v. Harris*, 50 A.3d 15, 28-29 (N.J. 2012) (holding that there is no reasonable expectation of privacy in a firearm's serial number when the firearm is exposed to public view).

As the Supreme Court has held, actions taken to expose a serial number or other identifying mark that is not already in plain view constitute a search. *Arizona v. Hicks*, 480 U.S. 321, 324-25 (1987) (holding that moving stereo equipment to obtain its serial number constituted a search). There is a "distinction between looking at a suspicious object in plain view and moving it even a few inches [that] is much more than trivial for purposes of the Fourth Amendment." *Id.* at 325 (internal quotation marks omitted). That is especially true where, as here, an independent object is moved to expose the serial number or other identifying mark.

public thoroughfares.") He may even have been entitled to enter the driveway to get a closer look at the tarp or the part of the motorcycle already exposed to public view, perhaps to confirm his impression that the shape, contours, and wheel matched those of the motorcycle that had previously eluded him. *Oliver v. United States*, 466 U.S. 170, 180 (1984) (differentiating open fields, for which officers need no warrant to enter and observe what they see with their naked eyes, from curtilage).[4] But he was not entitled to search the tarp

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[4] Based on the photograph taken by Officer Rhodes and admitted into evidence at trial, the driveway is the only route by which to travel from the street to the front porch and front door without walking on the lawn. However, the driveway extends past the house, running alongside it after the front yard ends, and continues well beyond the front porch and front door to allow vehicles to be parked beside the house. Officer Rhodes' photograph shows that the covered motorcycle was parked in this part of the driveway, beyond the front perimeter wall of the house, past the front porch and front door, and that it was merely feet–no more than the width of the sport-utility vehicle parked in front of it–from the side perimeter wall of the house.

The law "regard[s] the area immediately surrounding and associated with the home--what our cases call the curtilage–as part of the home itself for Fourth Amendment purposes. . . . This area around the home is intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened." *Florida v. Jardines*, 133 S. Ct. 1409, 1414-15 (2013) (internal quotation marks omitted).

I do not address the question of whether the part of the driveway where the motorcycle was parked, within feet of the side of a house in a residential suburban neighborhood and as immediately surrounding the home as possible without being inside it, was curtilage or open field for Fourth Amendment purposes. Searching the tarp without a warrant was unconstitutional even if the area where the motorcycle was parked is considered to be open field. *Husband v. Bryan*, 946 F.2d 27, 29

to reveal what it covered without a warrant.

Accordingly, I dissent from the majority's opinion that Officer Rhodes' warrantless search was permitted by the automobile exception to the Fourth Amendment's warrant requirement.

(5th Cir. 1991) (noting that the open fields doctrine permits observation only); *see also United States v. Dunn*, 480 U.S. 294, 304 (1987) ("[T]here is no constitutional difference between police *observations* conducted while in a public place and while standing in the open fields." (emphasis added)); *Allinder v. Ohio*, 808 F.2d 1180, 1185 (6th Cir. 1987) (noting that the doctrine allows officers to enter open fields but not to search personal effects found there).

APPENDIX B

COURT OF APPEALS OF VIRGINIA

Record No. 1096-14-2

[Filed July 21, 2015]

RYAN AUSTIN COLLINS	)
	)
v.	)
	)
COMMONWEALTH OF VIRGINIA	)
	)

FROM THE CIRCUIT COURT OF
ALBEMARLE COUNTY
Cheryl V. Higgins, Judge

Charles L. Weber, Jr., for appellant.

Michael T. Judge, Senior Assistant Attorney General (Mark R. Herring, Attorney General, on brief), for appellee.

Present: Chief Judge Huff, Judges Beales and AtLee
Argued at Richmond, Virginia

OPINION BY
JUDGE RICHARD Y. ATLEE, JR.

On May 7, 2014, a judge convicted Ryan Austin Collins (hereinafter "appellant") for receiving stolen goods. The court sentenced him to three years in prison, with all but two months suspended. Appellant argues that the trial court erred in two respects. First,

appellant contends that the trial court erred in denying his motion to suppress evidence related to the stolen motorcycle because law enforcement obtained the evidence through an illegal search, in violation of the Fourth Amendment. Second, appellant submits that the trial court erred in denying his motion to strike because the evidence was insufficient as a matter of law to prove appellant knew the motorcycle was stolen. For the reasons that follow, we find no error and affirm.

I. Facts of the Case

"On appellate review, we are bound by the familiar principle that 'we must consider the evidence and all reasonable inferences fairly deducible therefrom in the light most favorable to the Commonwealth, the prevailing party below.'" Robinson v. Commonwealth, 273 Va. 26, 30, 639 S.E.2d 217, 219 (2007) (quoting Rose v. Commonwealth, 270 Va. 3, 6, 613 S.E.2d 454, 455 (2005)). So viewed, the evidence is as follows.

On July 25, 2013, Albemarle County Police Officer Rhodes was on patrol when he saw a motorcycle rapidly approaching his vehicle from behind. Officer Rhodes's radar indicated the motorcycle was going 100 miles per hour. The motorcycle passed Officer Rhodes, at which point he activated his lights and attempted to initiate a stop. The motorcycle then raced off at a speed exceeding 140 miles per hour. Officer Rhodes initially pursued the driver, but ultimately abandoned the pursuit due to the driver's recklessness. This same motorcycle was associated with an earlier eluding incident involving a different police officer, Officer McCall.

Officer Rhodes taped the July 2013 eluding incident on a video recording device in his vehicle, and recorded the motorcycle's license plate number. The plates came back as inactive, and had been so for several years. The plates previously had been associated with Eric Jones (hereinafter "Jones"). Officer Rhodes learned from Jones that he had sold the motorcycle prior to the eluding incident, and another source linked appellant to the motorcycle. Through another officer who had access to appellant's Facebook page, Officer Rhodes obtained two images. The first depicted a residence with several vehicles parked in the driveway and a silver Acura parked in front of the house. The other depicted an orange and black motorcycle parked between a silver Toyota 4-Runner and a black sedan, beside a low brick wall framing the driveway at the same residence. Officer Rhodes recognized the motorcycle as the one he attempted to stop during the July 2013 eluding incident and identified a number of custom features on the bike. Specifically, it had chrome accents and had been "stretched out," meaning a rear piece was added to the motorcycle, a modification generally indicating the motorcycle was intended for drag racing.

On September 10, 2013, appellant was at the DMV to register a silver Acura. Officer Rhodes heard appellant's name on the police radio because other officers were investigating the vehicle. Officer Rhodes went to speak with appellant and showed him the photos from his Facebook page. Appellant denied knowing anything regarding the location of the house or the motorcycle. Officer McCall, the officer who was present for the earlier eluding incident, also went to

the DMV and questioned appellant. Appellant told him that he had not driven a motorcycle for several months.

While the officers questioned appellant at the DMV, Officer Rhodes learned the location of the residence in the photos from other sources. After leaving the DMV, he went to the address, where he saw a "stretched out" motorcycle with visible chrome wheels and swingarm (part of the rear suspension on a motorcycle) parked in a similar location and at a similar angle in the driveway as in one Facebook photo. Someone had partially covered the motorcycle with a tarp. Officer Rhodes took a picture of the covered motorcycle from the sidewalk. He then walked up the driveway, lifted the tarp off of the motorcycle, and confirmed that it was the one from the July 25, 2013 eluding incident. The motorcycle now had different plates. When Officer Rhodes ran the license plate number, he found that the plates were associated with a different vehicle. Officer Rhodes ran the vehicle identification number and learned that the motorcycle had been reported stolen in New York several years earlier.

After surveilling the residence, Officer Rhodes went to the front door. Appellant answered. When asked about the motorcycle, appellant initially denied knowing about it, but later admitted that he had purchased it from Jones. Appellant also stated that he had recently driven it to get new tires. Before that, it had been at his mother's home. It had been in its current location at the residence, where appellant's girlfriend lived and he frequently stayed, for about a week. Less than one hour had passed between Officer Rhodes questioning appellant at the DMV to this point. Officer Rhodes arrested appellant for receiving stolen

property. During a search incident to arrest, Officer Rhodes found a key to the motorcycle in appellant's pocket.

II. Alleged Fourth Amendment Violation

Appellant first argues that the trial court erred in denying his pre-trial motion to suppress because Officer Rhodes violated appellant's Fourth Amendment rights by entering the property and lifting the tarp to view the motorcycle.

A. Standard of Review

"On appeal, constitutional arguments present questions of law that this Court reviews de novo." Crawford v. Commonwealth, 281 Va. 84, 97, 704 S.E.2d 107, 115 (2011) (citing Shivaee v. Commonwealth, 270 Va. 112, 119, 613 S.E.2d 570, 574 (2005)); see also Archer v. Commonwealth, 26 Va. App. 1, 8, 492 S.E.2d 826, 830 (1997) (stating that "[q]uestions of reasonable suspicion and probable cause to make a warrantless search are subject to *de novo* review"). In our review, we "must give deference to the factual findings of the circuit court and give due weight to the inferences drawn from those factual findings; however, the appellate court must determine independently whether the manner in which the evidence was obtained meets the requirements of the Fourth Amendment." Commonwealth v. Robertson, 275 Va. 559, 563, 659 S.E.2d 321, 324 (2008). "The issue of whether an officer acted with probable cause and under exigent circumstances . . . is a mixed question of fact and law that we review de novo." Robinson v. Commonwealth, 273 Va. 26, 39, 639 S.E.2d 217, 224-25 (2007) (citing

Brown v. Commonwealth, 270 Va. 414, 419, 620 S.E.2d 760, 762 (2005)).

B. Relevant Legal Standards: Protected Searches and Exigent Circumstances

Appellant challenges two separate actions of Officer Rhodes: first, entering onto the property, and second, lifting the tarp to view and photograph the motorcycle. Appellant relies heavily on two recent cases from the United States Supreme Court in support of his argument, United States v. Jones, 132 S. Ct. 945 (2012),[1] and Florida v. Jardines, 133 S. Ct. 1409 (2013).[2] Both cases concern what constitutes a

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[1] In Jones, the Court determined that the government's installation of a GPS device on the defendant's vehicle, and its use of that device to monitor the vehicle's movements, constituted a search under the Fourth Amendment because it "involved a degree of intrusion that a reasonable person would not have anticipated." Jones, 132 S. Ct. at 964. Appellant misconstrues the holding in Jones, ignoring the fact that it primarily concerned the search method, not the object searched. Instead, appellant focuses on the fact that the vehicle in Jones was parked at the defendant's residence, and argues that Jones stands for the unremarkable concept that "[t]he motor vehicle is an effect protected by the Fourth Amendment." Appellant's Br. at 13. More egregiously, appellant fails to note that in Jones, the government forfeited the argument that it had probable cause for the search, and thus the search was lawful under the automobile exception, because it failed to raise the argument below. Jones, 132 S. Ct. at 954.

[2] In Jardines, the Court held that the government's use of a trained police dog to investigate the defendant's home and its immediate surroundings was a "search" within the meaning of the Fourth Amendment. Jardines, 133 S. Ct. at 1417-18. The Court found that an "implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly

protected search under the Fourth Amendment; neither addresses any exceptions to those protections. The Commonwealth does not dispute that Officer Rhodes's actions constituted searches. Accordingly, the question is what exceptions, if any, may apply to each search. The most relevant exception in this case is exigent circumstances.

Exigent circumstances render lawful an otherwise unlawful search. A number of different conditions may create exigencies justifying a warrantless search, including "the officers' reasonable belief that contraband is about to be removed or destroyed[,] . . . information that the possessors of the contraband are aware that the police may be on their trail," or "whether the officers have strong reason to believe the suspects are actually present in the premises." Verez v. Commonwealth, 230 Va. 405, 410-11, 337 S.E.2d 749, 753 (1985). When evaluating if exigent circumstances existed, "the court must examine the circumstances as they reasonably appeared to the law enforcement officers on the scene." Id. at 411, 337 S.E.2d at 753.

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to be received, and then (absent invitation to linger longer) leave," id. at 1415, but that "introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence is something else. There is no customary invitation to do *that*," id. at 1416. Appellant merely presents the case as support for the familiar concept that the Fourth Amendment protects the curtilage of the home, a point the Commonwealth readily concedes.

C. Analysis

1. Probable Cause

For a search to be lawful due to exigent circumstances, Officer Rhodes needed probable cause to search; accordingly, this is a helpful starting place for our analysis. In support of his argument that Officer Rhodes did not have probable cause to search, appellant contends that Officer Rhodes did not learn that the "motorcycle may have been the same one involved in an earlier eluding incident" until after he trespassed onto the property. Appellant's Br. at 16. This is facially incorrect, as evidence at trial indicated that from the public street, Officer Rhodes could see, as could any other passerby, a number of features unique to this motorcycle. These include the unusual length of the motorcycle due to it having been "stretched out" for drag racing, which was clearly visible even when under the tarp. In addition, the tarp did not extend to the ground, leaving the customized chrome wheel covers and swingarm uncovered. These are all distinctive features Officer Rhodes recognized from the motorcycle he encountered, and videorecorded, during the eluding incident. Furthermore, Officer Rhodes possessed photos of the same motorcycle before someone covered it with a tarp, parked at a similar angle and in the same location at that residence. In light of these facts, Officer Rhodes unquestionably had probable cause to believe that the motorcycle was the one from the eluding incident before entering the property.[3]

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[3] Appellant also argues that Officer Rhodes did not possess probable cause to search because Officer Rhodes did not and does not possess probable cause to charge appellant with eluding, as he

2. Protected Searches and the Curtilage

Having determined that Officer Rhodes had probable cause to search, we now turn to the individual "searches." The first "search" challenged is Officer Rhodes's entry onto the property to examine the motorcycle. "[T]he area 'immediately surrounding and associated with the home'— what our cases call the curtilage—[i]s 'part of the home itself for Fourth Amendment purposes.'" Jardines, 133 S. Ct. at 1414 (quoting Oliver v. United States, 466 U.S. 170, 180 (1984)). "This area around the home is 'intimately linked to the home, both physically and psychologically,' and is where 'privacy expectations are most heightened.'" Id. (quoting California v. Ciraolo, 476 U.S. 207, 213 (1986)).

In determining whether the area in question constitutes curtilage, we generally consider:

> "[1] the proximity of the area claimed to be curtilage to the home, [2] whether the area is included within an enclosure surrounding the home, [3] the nature of the uses to which the area is put, and [4] the steps taken by the

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could not know if appellant was the person driving the motorcycle on the evening in question. This argument confuses the probable cause needed to arrest and charge an individual with the probable cause required to conduct a lawful search. Officer Rhodes had numerous reasons to believe that the motorcycle was the one involved in the eluding incident and that a search would provide information leading to the individual who committed the crime. Officer Rhodes's decision not to pursue eluding charges against appellant, regardless of the reason, did not vitiate the probable cause he had to search.

> resident to protect the area from observation by people passing by."

Robinson v. Commonwealth, 45 Va. App. 592, 605, 612 S.E.2d 751, 758 (2005) (quoting United States v. Dunn, 480 U.S. 294, 301 (1987)). In Robinson, the record contained, and we examined in detail, abundant testimony directly addressing these factors, such as the specific activities performed in the spot where the search took place and exact distances from the house. In the absence of a similarly detailed record here, we decline to conjecture the facts necessary to perform a precise analysis. In any event, we can assume without deciding that Officer Rhodes entered the curtilage when he walked up the driveway because numerous exigencies justified the search; therefore, the assumption fails to alter the ultimate lawfulness of the intrusion under the Fourth Amendment.

3. Exigent Circumstances

Examining the circumstances as they reasonably appeared to Officer Rhodes, numerous exigencies justified both his entry onto the property and his moving the tarp to view the motorcycle and record its identification number. As a preliminary matter, Officer Rhodes had a reasonable belief that the motorcycle could be removed or destroyed, as a motorcycle is readily movable. In fact, appellant recently had driven the motorcycle from where he had originally stored it at his mother's home, to a service station, before bringing it to the residence where Officer Rhodes found it. Moreover, the same motorcycle had successfully eluded the police on two previous occasions, and could potentially have done so again here. However, mere mobility is far from the only exigency Officer Rhodes

faced. Officer Rhodes had, within the same hour, spoken with appellant at the DMV where appellant denied owning or knowing anything about the motorcycle or the residence in the picture. Accordingly, Officer Rhodes not only knew that appellant was aware that law enforcement was investigating incidents involving the motorcycle and where they might find it, but even more, he knew that appellant had an interest in concealing or destroying evidence in order to perpetuate his lies to law enforcement. In fact, when Officer Rhodes arrived at the house, he saw that someone had placed a tarp over the motorcycle, indicating a possible attempt to conceal it. In the brief time between when appellant returned to the house and when Officer Rhodes knocked on the door, he had changed his clothing from what he wore at the DMV to jeans, a heavy long sleeve shirt, and work boots similar to those worn during the eluding incident, despite it being over 90 degrees that day. Appellant even had the key to the motorcycle in his jeans pocket. Although the search took place before appellant returned home and changed, these actions further speak to the reasonableness of Officer Rhodes's belief that appellant might attempt to relocate the motorcycle. Together, the facts indicate that appellant not only possessed an interest in, but also the ability and probable intention to, move the motorcycle out of the reach of law enforcement. See Thims v. Commonwealth, 218 Va. 85, 91, 235 S.E.2d 443, 446 (1977) (holding that exigent circumstances existed when law enforcement went onto private property to examine a stolen vehicle, despite the fact that defendant, and the keys to the vehicle, was in police custody). In view of the above, we conclude that sufficient exigencies existed for Officer

Rhodes to enter the property and examine the motorcycle.

Furthermore, the Supreme Court of Virginia has previously upheld a search where an officer walked up a defendant's driveway and recorded a stolen car's vehicle identification number, stating:

> [The officer] had probable cause to believe that the car was the fruit of a crime [and] that it might be stolen . . . . He then for the first time had probable cause to seize and search the vehicle. To do so he had the right to enter the driveway and open the car door to determine the identification number. Such an investigation, when made on public property or property open to the public, has been held not to be a search, or if a search, to be a reasonable one, even in the absence of probable cause. Here, while the investigation was made on private property, it was grounded on probable cause.

Id. at 91-92, 235 S.E.2d at 447 (citations omitted). The Court also upheld the search on the alternative grounds that "in addition to probable cause there were exigent circumstances arising from the inherent mobility of a motor vehicle." Id. at 93, 235 S.E.2d at 447.[4] Accordingly, for the reasons stated, we find that

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[4] We note that the United States Supreme Court has suggested that a search of a vehicle on private property requires more than mere mobility, as is generally sufficient under the "automobile exception." Coolidge v. New Hampshire, 403 U.S. 443, 460 (1971) (plurality opinion) (stating that "'exigent circumstances' justify the warrantless search of 'an automobile stopped *on the highway*,' where there is probable cause, because the car is 'movable, the

Officer Rhodes acted lawfully under the Fourth Amendment in entering the property and searching the motorcycle.

III. Sufficiency of the Evidence

Appellant's second assignment of error challenges the sufficiency of the evidence that he knew that the motorcycle was stolen. In support of this argument, he first alleges that Officer Rhodes lied repeatedly under oath and intentionally misled the court. Next, he argues that the trial court was plainly wrong in finding that Officer Rhodes's testimony was nearly identical to Officer McCall's testimony, and therefore could be treated as credible. Finally, he argues that Jones's testimony was inherently incredible.

A. Standard of Review

"Whether the evidence adduced is sufficient to prove each of those elements is a factual finding, which will not be set aside on appeal unless it is plainly wrong." Lawlor v. Commonwealth, 285 Va. 187, 223-24, 738 S.E.2d 847, 868 (2013) (citing George v. Commonwealth, 242 Va. 264, 278, 411 S.E.2d 12, 20 (1991)). "In reviewing that factual finding, we consider the evidence in the light most favorable to the

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occupants are alerted, and the car's contents may never be found again if a warrant must be obtained'" (quoting Chambers v. Maroney, 399 U.S. 42, 51 (1970)); see also California v. Carney, 471 U.S. 386, 392-93 (1985) (discussing the automobile exception's relevance "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place *not regularly used for residential purposes* . . ." (emphasis added)). Here, we need not rely on the automobile exception, for exigencies existed aside from the inherent mobility of the motorcycle.

Commonwealth and give it the benefit of all reasonable inferences fairly deducible therefrom." Id. at 224, 738 S.E.2d at 868 (citations omitted).

B. Analysis

Appellant argues that there was insufficient evidence that he knew the motorcycle was stolen. In support of this argument, he alleges that both Officer Rhodes[5] and Jones[6] lied under oath. He also argues that the trial court was plainly wrong in finding that Officer Rhodes's testimony was nearly identical to

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[5] Appellant presents a number of muddled arguments and examples ostensibly showing that Officer Rhodes intentionally misled the trial court. Although appellant failed to include citations to the transcript to support most of his claims on this issue, it appears that during the May 7, 2014 trial, Officer Rhodes struggled to recall certain facts he testified to during the October 17, 2013 preliminary hearing (such as exact dates or numbers of times he spoke to certain individuals or went to certain locations). During a demanding cross-examination, appellant's counsel pressed on these inconsistencies as evincing deceptive intent. Officer Rhodes apologized, stating that he felt "somewhat out of it" because he was sick, taking medication, and had been at the doctor that morning. App. at 206.

[6] We decline to pick apart the specific testimony appellant highlights as inherently incredible to explain why the fact-finder reasonably believed it. Appellant ultimately wishes for this Court to determine "the most logical inference" the fact-finder should have drawn from Jones's testimony, and what Jones "most likely told" appellant when he purchased the motorcycle. Appellant's Br. at 32-33. However, we, as an appellate court, may not "preside *de novo* over a second trial." Haskins v. Commonwealth, 44 Va. App. 1, 11, 602 S.E.2d 402, 407 (2004).

Officer McCall's testimony, and therefore could be deemed credible despite some inconsistencies.[7]

When appellant challenged the sufficiency of the evidence of guilty knowledge at trial—specifically pointing to Jones's and Officer Rhodes's purported deception or dishonesty—the trial court considered the evidence, and found a substantial number of inconsistencies in appellant's statements which called

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[7] Appellant challenges the trial court's conclusion that Officer McCall's testimony was substantially similar to Officer Rhodes's, because Officer McCall was not present when Officer Rhodes questioned appellant at the residence, and some differences existed between their questioning of appellant at the DMV. However, the trial judge's conclusion was just one small piece of his ultimate finding that sufficient evidence existed of appellant's knowledge that the motorcycle was stolen. Specifically, after noting that Jones testified that he told appellant that he believed the vehicle was stolen because it had no title, the judge continued:

> So, then the Court looks at the testimony of the defendant when he is confronted by the officers, and there did appear to be some confusion by Officer Rhodes as to what he remembered, but as was true of defense witnesses, these events happened a while ago. However, the Court would note that Officer McCall's testimony was almost identical to Officer Rhodes' testimony. Officer McCall testified that he responded to the DMV, and after giving the defendant Miranda he asked him about the motorcycle, and he said the defendant said that he had not owned a motorcycle in a month, that he had not driven any motorcycles, that the last motorcycle in months, the last motorcycle he owned was green and that that was all that he knew.

App. at 262. The judge went on to discuss the other inconsistencies in the testimony, discussed *infra*, ultimately concluding that together, the evidence supported a finding that appellant knew that the bike was stolen.

into question his argument that he did not know the motorcycle was stolen. Even if the fact-finder did not believe Jones when he testified that he told appellant that the motorcycle had no title and he assumed it was stolen, it could have concluded appellant knew based upon his numerous subsequent lies to law enforcement. When questioned at the DMV, appellant told both Officer Rhodes and Officer McCall that he had never seen the motorcycle, despite the fact that he had a photo of it on his Facebook profile and Officer Rhodes arrested him at the residence where it was parked later that same day. During the questioning at the DMV, appellant also stated that he had not owned a motorcycle for a month and that the last motorcycle he owned was green. The trial court noted that, adopting the defense's theory that appellant did not own the motorcycle at the time of the eluding incident, a reasonable innocent person in appellant's position would have acknowledged that he owned the motorcycle, but explained that he did not own it on the date in question. Instead, appellant lied, which the trial court may reasonably consider as evidence of his knowledge that the bike was stolen. See Hawkins v. Commonwealth, 288 Va. 482, 486, 764 S.E.2d 81, 84 (2014) (noting that a fact-finder may properly consider a false or evasive account as evidence of guilty knowledge (citing Covil v. Commonwealth, 268 Va. 692, 696, 604 S.E.2d 79, 82 (2004))).

Furthermore, the fact-finder could have considered numerous other inconsistencies in appellant's argument to the trial court and statements to law enforcement. For example, appellant's mother testified that appellant had parked the motorcycle at her residence for most of August of 2013, where it sat

plainly visible. Appellant's girlfriend testified that she had never seen the motorcycle until he brought it to her new residence in early September, despite the fact that she was living out of appellant's mother's home part-time and frequently visited and spent nights there. In addition, there was evidence of an attempt to conceal the motorcycle, such as someone changing the motorcycle's tags between the date of the eluding incident and the date of the search. Moreover, as noted above, after the officers questioned appellant at the DMV, Officer Rhodes saw that the previously uncovered motorcycle was now under a tarp. Finally, when Officer Rhodes confronted appellant at the residence, he changed his story several times, first telling Officer Rhodes that he did not own or know anything about the motorcycle, then that it belonged to a friend, before finally admitting that he had purchased the motorcycle from Jones.

"When weighing the evidence, the fact finder is not required to accept entirely either party's account of the facts. The fact finder may reject that which it finds implausible, yet accept other parts which it finds to be believable." Barnes v. Commonwealth, 33 Va. App. 619, 630, 535 S.E.2d 706, 711-12 (2000) (citing Barrett v. Commonwealth, 231 Va. 102, 107, 341 S.E.2d 190, 193 (1986)). Perhaps another fact-finder could have found Jones or Officer Rhodes not credible or their testimony unbelievable, or agreed with appellant's interpretation of the facts instead of the Commonwealth's. However, the fact-finder here did not, and we are "not permitted to reweigh the evidence." Nusbaum v. Berlin, 273 Va. 385, 408, 641 S.E.2d 494, 507 (2007). The trial court was not plainly wrong to conclude that sufficient credible evidence existed to find that appellant knew

the bike was stolen; accordingly, it did not err in denying appellant's motion to strike.

IV. Conclusion

For the foregoing reasons, we find the trial court did not err in denying appellant's motion to suppress or motion to strike. Accordingly, we affirm the ruling of the trial court.

Affirmed.

APPENDIX C

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

RYAN COLLINS

Defendant.

COURT APPEARANCE

Taken on

April 30, 2014

LANE'S COURT REPORTERS, INC.
401 8th STREET NE
CHARLOTTESVILLE, VIRGINIA 22902

[p.2]

APPEARANCES:

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Attorney for Commonwealth

Charles L. Weber, Esq.
252 E. High Street
Charlottesville, VA 22902
Attorney for Defendant

Before: The Honorable Cheryl V. Higgins

CONTENTS

WITNESS - COMMONWEALTH

David Rhodes

DIRECT	CROSS	REDIRECT	RECROSS
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WITNESS - DEFENSE

Candice Beach

DIRECT	CROSS	REDIRECT	RECROSS
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Terry Roberts

DIRECT	CROSS	REDIRECT	RECROSS
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EXHIBIT

NUMBER	DESCRIPTION - Commonwealth	RECEIVED AT PAGE
1	Facebook photo	7
2	Pictures of house	11
3	Photo of motorcycle	13
4	Receipt from Jarman's	16

NUMBER	DESCRIPTION - Defense	RECEIVED AT PAGE
1	Still photo	4

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April 30, 2014

THE COURT: Good afternoon, Mr. Weber, how are you?

MR. WEBER: Good afternoon, Your Honor.

THE COURT: So let the record reflect that his is the case of Commonwealth v. Ryan Collins. Mr. Collins is in the courtroom with his counsel Mr. Weber and Mr. Casey and Ms. Winn are here on behalf of the Commonwealth and we are here for the defense motion to suppress. Are both sides ready to present?

MR. WEBER: We are, Your Honor.

THE COURT: And is there a motion to exclude witnesses?

MS. WINN: No, Your Honor?

THE COURT: Mr. Weber?

MR. WEBER: We're not going to make a motion.

THE COURT: So opening statement, Mr. Weber?

MR. WEBER: Your Honor, this is a case where the motion suppress is based a search without a warrant. So I believe it is up to the Commonwealth to put evidence on what would show that the search was

within the bounds of law. We'd ask that they put their evidence on.

THE COURT: Thank you. Ms. Winn, do you wish to make an opening statement?

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MS. WINN: Your Honor, the Commonwealth rest on our brief.

THE COURT: Have you had an opportunity to read that Mr. Weber?

MR. WEBER: I have.

THE COURT: Thank you. So, Ms. Winn, your first witness.

MS. WINN: Your Honor, the Commonwealth would like to call Officer David Rhodes.

THE COURT: Officer Rhodes, if you'll remain standing at your witness box and raise your right hand the clerk will swear you in.

OFFICER DAVID RHODES, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By Ms. Winn:

Q Good afternoon, Officer Rhodes, are you Officer Rhodes with the Albemarle County Police Department?

A Yes, I am.

Q And were you working on September 10th in that capacity in that uniform displaying your badge of authority?

A Yes, I was.

Q Did you respond to a call that day?

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A I did.

Q And could you briefly describe what happened.

A I responded to DMV on Abby in the Pantops area of Albemarle County. There were other officers on the scene there that were investigating or had been called there for a stolen vehicle or a report of a stolen vehicle that was being attempted to being registered in the State of Virginia that was actually stolen or reported stolen out of New Jersey. So there were---other officers were there at the DMV. While listening to radio traffic Mr. Collins name came up on the radio related to that vehicle and I had been looking for Mr. Collins to speak with him. So I responded to the DMV so I could speak with him in reference to another case.

Q Okay, and so when you responded to---when you went to the DMV to speak with him about the other case, what were speaking to him about?

A I wanted to speak with him in reference to a motorcycle that I had attempted to stop on July 25th of 2013 on 250 Bypass in Albemarle County.

Q Did you show him the photographs at that time?

A I did. During our conversation when he was attempting again, attempting to register this vehicle

and he was speaking with some other officers in the---based on from his Facebook page I was able to get a couple of pictures that I showed Mr. Collins.

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Q Some of these Facebook photos are here today and I would like you to identify a couple of them and then I have questions to ask you about them. This is the first one?

A This is a picture from---on his Facebook page I used my department issued phone to take a picture of the picture from the Facebook page that was displayed on a laptop computer inside a car.

Q And I'm going to show that to defense counsel and then have that introduced as an exhibit.

MR. WEBER: I've seen that, no objection.

Q Your Honor, I'd like to move to admit this as Exhibit 1.

MR. WEBER: No, objection.

THE COURT: Mr. Weber it appears she has a series of pictures. Have you reviewed them all?

MR. WEBER: Let me see what you've got. I'll make sure I've reviewed them all.

Q Sure.

THE COURT: My follow-up question to that is going to be can we admit them collectively eventually as Commonwealth Exhibit #1?

Q Yeah, no, two of them are Facebook photos and two of them are photos that the officer took later on so I'd like to admit those Exhibits 1 and 2.

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THE COURT: That would be appropriate.

MR. WEBER: Your Honor, I have no objection to that.

Q So these with the Exhibit 1.

THE COURT: So the Court is going to admit the collectively as Commonwealth's Exhibit #1 and to clarify, I think I took the picture from you before you ask the officer; this is also a Facebook picture from his phone?

Q Yes, ma'am.

THE COURT: Thank you.

(Commonwealth's Exhibit #1 was so duly marked and received into evidence at this time.)

Q And so I'd like to ask you a little bit about those first two Facebook photos.

A Yes, ma'am.

Q The (unintelligible) one or the first photo show the silver car. Could you tell me a little bit about that?

A The first photo is a silver Acura parked on the---perpendicular to the curve and a black Acura, appears to a black Acura parked in the driveway with a Silver (sorry) Toyota 4-Runner in front of ranch style

brick resident. And that silver Acura appears to be the same Acura that was

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attempting to be registered at DMV the same day that I was there.

Q Okay. In the second photograph where it shows a black vehicle and then the motorcycle could you tell us a little bit about that one?

A The second photo is black Acura that's parked again, was from his Facebook page that's parked in the driveway behind the same 4-Runner that's depicted in the first picture and the motorcycle is parked along the edge of the brick kind of a wall there, it's a retaining wall, if you will. It's parked along there between the black Acura and the silver 4-Runner is a orange and black motorcycle that's clearly visible in that second picture.

Q Now I want to talk a little bit more about that black and orange motorcycle? Were there some unique characteristics about that motorcycle?

A Yes, it had been stretched out, which means the commission of motorcycle, the rear end had been added on to make it longer which normally indicative of a racing type motorcycle, drag racing, or a sport bike or that kind of thing. It had been stretched out. It's not, it didn't look like a conventional motorcycle. It also was chrome. It had chrome swing arm on it and also chrome wheels on both the front and the back which was somewhat unique to that motorcycle. Not something you'd normally see driving down the

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roadway and not something you can buy from the factory either. So that's a customized type motorcycle.

Q What is a swing arm?

A It's the part of the---the rear part of the motorcycle that the rear tire attaches to from the frame that extends out the back where the rear tire actually attaches to it. That's the swing arm of the motorcycle.

Q Thank you. And so did you know where this house was in fact, (unintelligible)?

A I did not, at the time I was not---looking at the pictures I was not aware of where that house was located at the time. I went to Mr. Collins with the pictures and showed him those photographs that I had taken on my phone and asked him if he knew where that was of his motorcycle. And he told me he didn't know anything about it or where it was located.

Q And then did you find out where that house was located?

A Yes, I did. I was able to obtain information from an informant that the house was located on Delmeade Avenue.

Q And is Delmeade Avenue in Albemarle County?

A It's in the City of Charlottesville.

Q How close is it to the border of Albemarle County?

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A Maybe a block away from the county line.

Q And so after you found that out from the informant what did you do next?

A Well I spoke with Mr. Collins a little bit more about the pictures and the photographs and asked him how long it had been since he had ridden the motorcycle. He told me it had a few---his exact statement to me was "it had been a long time". I asked him what a long time meant. And he told me a few months. We talked a little bit more about the title of the vehicle and some other things and then he left. Once I established where the---where that motorcycle possibly was based on that photograph and based on the informant information I then went to Delmeande Avenue.

Q And when you reached Delmeade Avenue did you find the house in the Facebook photograph?

A I did.

Q And did you find---what did you see in the driveway of the house?

A There's actually another picture so you can maybe if you want to refer that what I saw as I was driving down Belmeade Avenue.

Q Can I show you these two photos.

A Sure.

Q And then I'll show them I'll show them to (unintelligible)

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A As I was driving down Delmeade Avenue plainly from the roadway you can see a motorcycle just underneath a cover on Delmeade Avenue in the driveway---the address was 2304 Delmeade Avenue. In that address in the driveway there was a motorcycle that was parked there behind a silver 4-Runner which would match the description photo that I had just seen thirty minutes prior. That motorcycle was covered up with a white cover. But from the roadway I was able to see that the motorcycle, based the silhouette underneath the tarp or the cover for it was much longer than what the conventional motorcycle would normally look like covered up. It was much longer and also the chrome, the front view of the motorcycle was sticking out from under the cover and it was chrome which appeared to be the same motorcycle that I had attempted to stop and the one I was looking for.

Q I'm actually going to (inaudible) And we'd like to admit that as Commonwealth's Exhibit #2?

THE COURT: Is there any objection?

MR. WEBER: No objection.

THE COURT: So the Court will admit the picture of Commonwealth Exhibit #2.

(Commonwealth Exhibit #2 was so duly marked and received into evidence at this time.)

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Q And officer is photograph in Exhibit 2, you took that that day?

A I did. I took that before I removed the cover on the motorcycle, yes.

Q And so just so I'm clear, you could see from the photograph that it did have that extension that made it longer than a conventional motorcycle?

A Yeah, from the silhouette and the outline underneath the cover it appeared to be much longer than what normal motorcycle would be under a cover. I've seen several motorcycles covered over fifteen years as a police officer and those motorcycles normally, the conventional ones look much shorter underneath that. The cover actually drapes off of it more on the front and the back than it was this one. It was standing up a little bit more on the motorcycle which indicated to me it was a little bit longer than the conventional motorcycle.

Q And so then the second photograph that I asked you about, the photograph that you took after you uncovered the motorcycle?

A Yes, ma'am, that's correct.

Q I'll show them to Mr. Weber.

MR. WEBER: No objection, Your Honor.

Q We'd like to admit that as Commonwealth's number 3.

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THE COURT: So the Court will admit it.

(Commonwealth's Exhibit #3 was so duly marked and received into evidence at this time.)

Q And just one question about Exhibit #3 there you can more clearly see that there is that extended sway arm where the wheel, the rear wheel is sort of bumped out behind the motorcycle?

A Correct.

Q Okay. And so while this was happening were you working with another officer at the time, too?

A I was, yes.

Q Okay. And so could you tell me a little bit about that?

A Officer Litton was there with me and we knowing that motorcycle is removal and able to be moved for evidentiary value we had (unintelligible) to determine if this was motorcycle that I was, in fact, looking for. So I, once I removed the cover then I ran the tag on that motorcycle that was displayed on the motorcycle at the time. It came back to a Kawasaki out of Waynesboro that was sold. Based on that I got the VIN number off the motorcycle and then ran that as well.

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Q And then could you also tell me a little about what you had instructed Officer McCall to do in the county?

A Yes, I received information that Mr. Collins had taken a motorcycle very recently to Jarman's Sports Cycle in Charlottesville to have two news tires put on it. I asked Office McCall then to go to Jarman's and see if, in fact, that motorcycle had been there for any type of service in the last, in the recent time, which he did.

Q And I'd like to present to you a receipt that Officer McCall pulled from Jarman's Motorcycle. Could you review that?

A The receipt is dated September 2nd, 2013. And it's listed as the repair order for Austin Ryan. Mr. Collins name is Ryan Austin Collins and it is listed as Austin Ryan with a 1014 Long Street address, which I believe is an old address that Mr. Collins used quite some---many years ago. The vehicle is described as a 2008 Suzuki with a VIN number, I'll read the whole VIN number---the VIN number is off based on the VIN number of the motorcycle and the VIN number that they had listed at Jarman's of the vehicle being serviced is off by one number. I believe that is probably a key stroke error I'm sure with Jarman's. I don't know that for sure but I would believe being off by one number which is the four digits on the---Jarman's records shows the last four digits on this one as 1585 in the VIN and the actual

[p.15]

VIN is 1685. So they, instead of a six it's a five. It shows on here that it was not purchased from them and the job for and they then they show that it's a 2008 Suzuki GSXR 600. And it doesn't show, doesn't show what they did to it. I don't see on here what they actually did to it. But it's---a $186 was to total of the bill. So it was eight days prior to the date that I was speaking with Mr. Collins or had had found the motorcycle.

Q Thank you, officer.

THE COURT: When did you obtain this information from Officer McCall?

A The same day within about an hour. Actually while I was speaking with Mr. Collins at his residence on Delmeade Avenue. Officer McCall brought me that printout from---that he had gone to Jarman's while I was actually on Delmeade Avenue to look at that.

THE COURT: So did you receive this information before or after you had taken the cover off of the bike?

A Probably after I had removed the cover.

THE COURT: So is there any objection to the admittance of Commonwealth's Exhibit #4, Mr. Weber?

MR. WEBER: Not for purposes of this hearing.

THE COURT: So the Court will then admit Commonwealth's Exhibit #4.

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(Commonwealth's Exhibit #4 was so duly marked and received into evidence at this time.)

Q Thank you. And so after you found this information from Officer McCall did you speak to Mr. Collins about the Jarman's transaction?

A I did.

Q And could you describe what happened when you spoke with him about that?

A Yeah, actually, back up just a little bit. I knocked on the door. Mr. Collins came to the door. He stepped outside to speak with me. I asked him if he knew anything about the motorcycle. He told me originally he didn't know anything about it. He then changed his story a couple times and said that it was a friend's

motorcycle. Eventually I asked him where he'd gotten the motorcycle. He gave me that information. When I asked him when he'd last ridden the motorcycle he told about a week ago from his mom's house in Northfield's to Delmeade Avenue. And this was actually a change from his story that he had told me at the DMV about forty-five minute---forty-five minutes to an hour prior to that. After speaking with---after getting the information from Officer McCall, let me see what his statement was about that, I spoke with Collins about that, about the Jarman's information. He admitted---he finally admitted

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to me that he had ridden it to Jarman's and when he had left his mother's house to get tires put on it.

Q And Officer when you were speaking with Mr. Collins that day could you describe his outfit or what he was wearing that day?

A He was wearing, initially when I was talking to him at DMV he was wearing shorts and flip flops and a t-shirt or something pretty casual, best I recall to that. Then once I spoke with him at Delmeade he had changed clothes and actually had put on a pair of jeans and had on a pair of boots and a long sleeve shirt. It was a hot day that day of September. It was probably in the mid 90's that day. It was pretty hot.

Q And so after you spoke with him about the motorcycle and he did admit that he took it to Jarman's a week prior what did you do next?

A Once I determined based on the VIN, that the VIN number had come back as a stolen vehicle and it

had been confirmed as being stolen I placed Mr. Collins under arrest for that and for the violation of the title.

Q And did you perform a search incident to arrest?

A I did.

Q And did you find anything during this?

[p.18]

A I found one single key in his pocket which appeared to be a motorcycle key. I went over to that motorcycle. Placed it in the motorcycle and it turned on and obtained the mileage, it's a digital readout on the motorcycle and obtained the mileage off of the readout of the motorcycle.

Q And what was that? Do you have the reading?

A I don't recall what the mileage was at that time, no?

Q Thank you for that, no further---oh, I have a couple more questions. And could you actually tell the Court briefly about moving back to that time in July that you referenced in the beginning just briefly about what happened in July when tried to stop the motorcycle?

A Yes. I was traveling southbound on 250 Bypass. I've got an unmarked car. I'm assigned to the traffic unit and have been for five years. I was traveling southbound on 250 Bypass approaching the Ivy Road, Old Ivy Road area. There was no vehicles anywhere around at that particular moment. I observed a motorcycle coming up behind me at a very high rate of speed. There was no vehicles between myself and that

motorcycle at all. I activated the rear antenna on my radar on my vehicle in the moving mode in the same direction mode and obtained a speed of 100 miles per hour in a posted 55 mile per hour zone. I---the motorcycle then came up to my left and we made eye contact. The driver was wearing a helmet that had a tinted shield on it so I couldn't see anything inside the helmet. I attempted---I turned on my emergency equipment. I attempted to stop the motorcycle. The motorcycle then immediately took off at a very high rate of speed over 140 miles per hour on the Bypass southbound. Then it got on the interstate and I stopped attempting to try to stop it. It was driving too reckless.

Q And would describe the driver's---what the driver of the motorcycle was wearing that day in July?

A Jeans and tan boots, some type that appeared to be like Timberland type boots and a long sleeve hooded sweatshirt, or some type of hooded clothing. I'm not sure what it was exactly, but it appeared to be gray, I believe, the best I can recall.

Q And would you say the boots were similar to the boots that he was wearing that day (unintelligible)

A Yes, I would say so.

Q And could you tell me what the make and model of the motorcycle of the motorcycle that you found at the address on Delmeade Avenue?

A It was 2008 Suzuki.

Q And do you recognize the defendant in court today?

A Yes, Mr. Collins over here.

[p.20]

Q Thank you. And also, so I want to go back quickly about the conversation you had with him after you went to the door and you answered the door on Delmeade Avenue. What was his---when he said that the motorcycle belonged to a friend and then you said he changed his story, what was his story after he said that it belonged to a friend?

A If I could look at my notes? He eventually---he just told me that he had ridden the motorcycle from his mother's house in Northfields over to Delmeade.

Q Did he say anything about the relationship of the motorcycle with Mr. Eric Jones?

A Yes, he did tell me that he had bought the bought the motorcycle from Eric Jones.

Q And did he said that after he said that the motorcycle belonged to a friend?

A Yes, that's correct.

Q And just for clarification when you ran the VIN what came up?

A It came up being as stolen out of New York State.

Q Thank you, so much, Officer Rhodes, please answer any questions Mr. Weber's may have for you.

[p.21]

CROSS-EXAMINATION

By: Mr. Weber

Q Officer Rhodes, I am going to probably rehash a little bit of this here.

A Okay.

Q But I want to establish a couple of thing. When you went to DMV you were going there to investigate this eluding issue, is that correct?

A That's correct.

Q You weren't specifically tasked to investigate the issue of the car that was alleged to have been stolen?

A That's correct.

Q And isn't it true that later on that day it was determined that the car that he was trying to register which was the silver Acura in photograph #2 was, in fact, not stolen, is that correct?

A That's correct, it was reported stolen out of New Jersey, but it was not.

Q We can clear that issue. That issue is off the table.

A That's correct.

Q So when you went up there your sole purpose in life was to talk to him about the eluding charges, is that right?

[p.22]

A Yes, sir, that's correct.

Q All right, on this eluding---on the eluding day, this was on the 250 Bypass, you said the motorcycle

came up behind you at a high rate of speed about 100 miles an hour, is that right?

A 100 miles per hour, exactly, yes, sir.

Q Okay, it came up right beside you when you tried to get off and you came back on you were slowed down to under to under 55 at that point?

A I don't think I ever testified to trying to get off and get back on but that is actually what happened, yeah.

Q Okay. But you tried to get off---it looks like you think of getting and you came back on and he came up beside you, is that right?

A Yes.

Q And you got a chance to look directly at the person who was riding the motorcycle?

A That's correct.

Q And the person on the motorcycle had a helmet with tinted mask on it and you couldn't identify him from Adam is that right?

A That's correct.

Q All right. And all you noticed that it was an orange Kawasaki and as soon as you put your lights on---

[p.23]

A That's an orange---orange/black Suzuki.

Q Suzuki, I'm sorry. I said, Kawasaki, it was a Suzuki. But as soon as you put your lights on he took off, is that right?

A That's correct.

Q And you got a picture of that vehicle taking off, did you not?

A I did, that's correct.

Q Your Honor, if I may access my Ipad here?

A Yes.

Q It's the only way I can it in color rather than black and white.

MS. WINN: Actually we have a copy of that if you would like---

THE COURT: Mr. Weber, I believe the Commonwealth has a copy of that picture.

Q Yes, let me show you a picture. That's the picture you took of the vehicle on July 25th?

A This is a picture of a paused video out of my vehicle.

Q Okay. It came from your vehicle.

A That's correct.

Q And it's on July 25th.

A Correct.

[p.24]

Q That's the same vehicle that was trying---that was eluding you on that day, is that right?

A That's correct, yes, sir.

Q Same driver, same vehicle, is that right?

A Yes, this is the same, the incident is the same, this is the photograph of a paused video, in-car video out of my vehicle. So I took---so I played the video on a large screen at the police department and paused it at this moment and took a still shot video with my department issued phone so I would have a photograph to look at, yes.

Q No, don't think you testified to it here, but in the court below you were accompanied by Officer McCall when you went up there to talk to Mr. Collins about the eluding issue, is that right?

A Officer McCall was already there. He got there about the same time I did, yes, because he was going to speak to Mr. Collins about another eluding issue as well.

Q And Officer McCall had another incident of eluding?

A Prior to mine.

Q Prior to yours. His was dated June the 4th?

A Correct.

Q Of 2013 and yours was July 25th so about 6 weeks apart, is that right?

A Yes, sir.

[p.25]

Q All right, so the two of you were up there and you wanted to talk to him about the same issue, all about eluding, June the 4th and July the 25th?

A That's correct.

Q All right. Now when you first went up there, so Officer McCall was there and he was already discussing the issue of the silver Acura, right?

A There were other officers there. There were several officers there already, right.

Q Couple for the city, couple for the county, maybe?

A There was nobody for the city, but there was a couple officers there. I don't recall every officer that was there, but Officer McCall and I got there about the same time.

Q But it was you that initiated the conversation about the eluding, is that right?

A I believe so.

Q Did you show that photograph to Mr. Collins?

A I believe I did, yes.

Q You did. You said, I want to talk to you about eluding and you showed him that photograph?

A Correct.

Q From that point on he's denying that he's eluding?

[p.26]

A Yes.

Q He denied that was him in that photograph, is that right?

A Yes, sir.

Q And so he never admitted and that's the photograph that you showed?

A That's correct.

Q All right. Now you also said that while Officer McCall was talking you went back to your computer in your car and you took some photographs of his Facebook page, is that right?

A That's correct.

Q You took those photographs on that day?

A Yes, I did, while he was still standing in the parking lot of DMV.

Q So those photographs were still on his Facebook page on that day?

A Yes, they were there. I looked right at them, yeah.

Q Didn't you testify in the court below that they had been taken off his Facebook page after July 25th?

A I'm not sure when they were taken off, but they were there on his Facebook page when I looked. I can't testify to whether he put them on or took them off, but I know

[p.27]

that they were taken off at some point because when we went to look for them again they were no longer there.

Q Did you have access to his Facebook page?

A I don't personally, no.

Q Somebody in your unit?

A Yes, somebody has access to his Facebook page.

Q Is it a police officer?

A Yes.

Q Okay. So the police officer was with you on your computer getting access to his Facebook page?

A On their computer, yes, sir---on their computer, yes, sir.

Q All right. You said as a result of looking at those pictures on Facebook you recognized the house as being somewhere on Delmeade Avenue, is that right?

A I believed it to be somewhere around there. I worked for the city for a while and I knew that area somewhat.

Q You worked for the city and you recognized the neighborhood?

A Yeah.

Q And you went over there and that's when you saw the photograph, I mean you saw the motorcycle with the cover on it?

A Right.

[p.28]

Q Is that right. And you said based upon the sellouts and the little bit of chrome on the wheels it looked like it could be the same motorcycle?

A It appeared to be, yes.

Q That appeared on July the 25th, is that right?

A Yes, sir, that's correct. And this isn't a, as far as being able to see it, obviously this is a blurry picture but I'm looking right, you got to remember I'm sitting in the driver's seat of the car looking, I've got windshield, I've got a side window here, so I'm looking, we're literally from here to the table. I could almost, if I opened the window, almost reach out and touch the driver and the motorcycle itself. So this picture really doesn't do justice from my naked eye to look at that motorcycle and to be able to identify it better with my naked eye than what this picture does. So, me looking at that through the windshield and sitting in the driver's seat and actually looking out my window at that motorcycle is much clearer and much easier for me to identify than what this photograph does, if that makes any sense.

Q I understand, but when you arrived on Belmeade Avenue it's covered.

A Right.

[p.29]

Q The only thing you can see is a silhouette and a little bit of chrome under the right wheel, on the right wheel, is that right?

A Right, correct, yes, that's correct.

Q Couldn't see the color of it? Couldn't see anything else to identify it as that same motorcycle?

A Absolutely, that's correct.

Q I mean it's a silhouette and a little bit of chrome?

A I wouldn't say a little bit, but it was enough as you can see in that picture there, you know, that much of the cover probably sticking up. There's not, you know, a little sliver. It's the, you know, a quarter of the wheel probably sticking out from underneath the cover.

Q Okay. And based upon the silhouette and the chrome you went up and took the cover off?

A That's correct.

Q And that, by the way that's in a driveway of a residence, is that right?

A Yes, sir, that's correct.

Q And you've got to walk up the driveway, probably maybe two or three car lengths to get to where the---

A There's probably a car length, yeah, a car length or two, something like that, yes, sir.

[p.30]

Q Okay, so you're on private property and you pulled the cover off and the first thing you see is a tag number?

A Yes, sir.

Q Now on July 25th you got a tag number off there didn't you?

A I did.

Q Okay. It wasn't the same tag number that was on the motorcycle in the driveway?

A No it was not, correct.

Q Okay. Did you run the tag number after the eluding incident?

A I did. I came back not on file. And once I talked with Investigator Davis from the DMV, that tag has not been active for several years so that would make sense that it would come back not on file because it is not on file once it's---after some amount of time it's not on file. But DMV, they deactivate that tag and they no longer have any information. When I went to PISTOL and ran that tag it came back to Eric Jones, that that motorcycle or that tag had been attached to Mr. Jones, Eric Jones at some point in time on another motorcycle, which is the same person that Mr. Collins told me he bought the motorcycle from. So I did get some information off that tag. But, unfortunately I couldn't find where that motorcycle actually belonged.

[p.31]

Q The pointed I'm getting at, the association of the tag number on July 25th to Eric Jones, did that come before or after September 10th?

A It came July 25th. When the eluding occurred I ran that tag number. When I'm looking out the window I actually ran the tag with the dispatcher as I'm trying to stop the motorcycle.

Q Right.

A In fact, I actually wrote the tag number on my hand before I tried to stop it because I was afraid the motorcycle wouldn't stop. When I ran that tag it came back not on file. That was on July 25th. Also on July 25th I then looked into our local database, our local computer within the police department, not DMV related, but local computer that we house all of our information for the city, county and university and another officer had stopped a motorcycle with the same tag that I was attempting to stop this motorcycle on about two years prior that Mr. Jones was operating and was issued a summons with Mr. Jones attached to that tag. So the tag that was on the motorcycle then did not come back on file to DMV but it did have information locally. Does that help clear up your question? And that was all done on the same date of July 25th?

Q Okay. So July 25th you associated Eric Jones with that eluding charge?

[p.32]

A No, I associated the tag number with Eric Jones. I could associate him with the eluding charge because I couldn't identify the rider of the motorcycle.

Q But did you try to develop suspects?

A Uh-huh. (Indicating. yes.)

Q It would be reasonable based upon your investigation of the tag number that Eric Jones was a suspect?

A Sure.

Q Did you talk to Eric Jones on July 25th?

A I did. He told me he sold the motorcycle.

Q When did you talk to him?

A I don't recall the date.

Q Was it before or after you arrested---

A Both, I've spoken with him after and I've also spoken with him before.

Q Okay, and he got arrested on September 10th.

A That's correct.

Q So how far in advance of September 10 did you talk to Eric Jones?

A I don't recall. It was sometime after the July 25th date. I just don't recall exactly. I don't remember.

Q Okay. So it must have been Eric Jones who told you that he sold the bike to Mr. Collins?

A I was able to develop that information. Mr. Jones was very difficult to contact and get a hold of

[p.33]

basically. But I was able to get that information that Mr. Collins was supposedly riding that motorcycle based on an informant, yes.

Q Based on an informant. Was the informant Eric Jones?

A It was not.

Q It was not. Was it William Frazier?

MS. WINN: Objection, Your Honor.

THE COURT: What's the basis for the objection?

Q Your Honor, if this is some sort of anonymous tip I'm entitled to find out.

MS. WINN: Who the informant was in this case doesn't go to the officer's probable cause in finding the bike in question on Delmeade Avenue or who the informant in this case isn't relevant.

THE COURT: So how is it relevant?

Q It's relevant if it's an anonymous tip, Your Honor. And if it's an anonymous tip it ought to be with some semblance of reliability. He's trying to claim he's got come probable cause here to go search this motorcycle.

MS. WINN: Your Honor, that's only if it's part of the probable cause. In this instance, the probable cause was found also because Officer Rhodes gained pictured

from Mr. Collins' own Facebook page of the motorcycle in question

[p.34]

that matched the motorcycle that matched the motorcycle from the eluding incident on July 25th.

THE COURT: You have the last word.

Q Your Honor, I believe it's relevant for this issue. It has to do with reliability of the informant. I'm entitled to know who the informant is and whether or not they've been deemed to be reliable.

THE COURT: So the Court agrees with the Commonwealth and is not going to consider that part of the probable cause; that that was information that the officer used may be for other purposes but not as to the probable cause for this search. So the objection is sustained.

Q What was the first date that you developed Mr. Collins as a possible suspect?

A I couldn't tell you the date, I don't know. It was sometime after July 25th. I just don't know the exact date. It was ongoing, you know. When I had time to look at it I did. I was doing other things. It wasn't like I was dedicated to doing that and that only. So I was doing other things in the course of my duty, my daily duty, so I was obtaining information and different things and looking at different things when I could, so I couldn't tell you the exact date. I don't know that.

Q You've had a lot contacts with Mr. Collins in the past, is that right?

[p.35]

A Quite a few, yes.

Q You've been to his house, is that correct?

A I've been to his house, which house?

Q Northfields, Norfields Circle.

A I don't know that I've been to his house. I don't think I've been personally to his house. I've been by his house, yes.

Q Okay. After you discovered or developed him as a suspect did you ever try to make contact with him at his house?

A No, I did not.

Q Never.

A No. I did not.

Q Did you testify in the court below that you did?

A Another officer attempted to make contact. I did not.

Q Okay. Did you testify that you tried to make contact one time?

A I tried to make phone contact with him one time and I did go by his residence and drove by there but there was no vehicles there so I did not make an attempt to contact him, that's correct.

Q And when you drove by---when you drove by there did you ever see an orange and black motorcycle?

[p.36]

A No, I did not.

Q Okay. You testified earlier that the motorcycle being a motor vehicle would be evidence, is that right?

A It's movable, sir.

Q Because it's movable?

A Right.

Q Okay. But it's, but is it, can you explain how the motorcycle sitting in a driveway is evidence of eluding?

MS. WINN: Objection, Your Honor. that is a legal conclusion.

Q Your Honor, he testified that it's going to be evidence. I want to understand why, how that's evidence of being the person that's going to be eluding on July 25th?

THE COURT: So I'm going to overrule the objection. The officer can answer the question.

A The reason I believe it would be evidence in eluding is being able to prove the owner and the operator of the vehicle. If that person lives there and that vehicle is housed there then you then have to develop a suspect in order to try to find who that was that was actually operating that vehicle on that date because I couldn't determine who that was. So I felt that there was evidence enough to determine if that motorcycle was, in fact, that motorcycle was, in fact, that motorcycle that ran from me that day. Whether it's licensed properly, whether it's insured prop-

[p.37]

erly, whether the driver that's operating that was operating the vehicle has got a proper license, whether he's got a motorcycle license or anything like that, that's why I believe it's evidence.

Q But you're discover the true nature of that particular motorcycle that's under the cover, is that right?

A Correct, yeah, right.

Q And the motorcycle itself is not, per se, illegal, it's not contraband or anything like that?

A No, but I think it has criminal investigation to determine the vehicle that just committed a felony it is then deemed to be, it needs to determine whether that vehicle is licensed properly, it's got insurance and all those types of things, that's my opinion.

Q Okay. But it has to do with the felony of eluding.

A That's correct.

Q And you've now examined all that stuff. You found out that it's owned out of New York or stolen out of somewhere and it's not licensed properly yet you still don't have probable cause to charge him eluding, do you?

A No, I don't, you're right, I do not.

Q Okay. The truth is you heard his name on the scanner?

A On the police radio, yes.

[p.38]

Q And you responded because it was Ryan Collins and you wanted to go talk to Ryan Collins?

A That's absolutely correct.

Q Okay. Nothing further at this point, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

By: Ms. Winn

Q Officer Rhodes, as we mentioned before the photograph that we were talking about from the July 25th eluding, that's a still taken from the video from your car that day and I know that it's fuzzy and still but obviously the video and your recollection provides a more clear picture but, could you tell us if that motorcycle in question has display items on the motorcycle?

A Absolutely, yes.

Q So, was it wasn't just that it was an orange motorcycle it was a very unique distinct orange motorcycle?

A Yes, that's correct.

Q And also, when you went to the house in Delmeade Avenue based on the Facebook pictures, in addition to the fact the house was the same and the fact that the motorcycles silhouette was the same, there were also the cars

[p.39]

that were in the Facebook photo that were also at the house that day?

A Right, the Facebook photo, one of the photos shows the same vehicle that Mr. Collins was attempting to register at DMV and then the next photo shows the black Acura in the driveway with the motorcycle that I---immediately when I saw the photo knew 100% sure that that was the same motorcycle that had not stopped for me on the Bypass based on looking at it. It was very distinct and I knew, absolutely no question in my mind that was the same motorcycle.

Q (Unintelligible)

RECROSS EXAMINATION

By: Mr. Weber

Q You knew it was the same motorcycle once you took the cover off?

A Right, yes, sir. No, I'm talking about, I'm talking about based on the photograph from the Facebook page that I initially saw---the two Facebook page photos was the silver Acura, the black Acura and then second photo with the black Acura in the driveway with the motorcycle without a cover on it sitting in front of that black Acura which Mr. Collins had told me he had just sold a black Acura a few weeks prior before my contact with him at the DMV. Putting

[p.40]

all that together reasonable suspicion would say that was the motorcycle that was involved.

Q You didn't have permission to go on that property, did you?

A No, I did not.

Q I have no further questions, Your Honor.

THE COURT: Was Defense Exhibit #1 admitted. Did you want that admitted, Mr. Weber.

MR. WEBER: Yes, Your Honor.

THE COURT: I take it there is no objection.

MS. WINN: No, Objections, Your Honor.

THE COURT: So, Defense Exhibit #1 is admitted.

(Defense Exhibit is so duly marked and received into evidence at this time.)

THE COURT: And the questions that I have, I just want to make sure that I'm right about timeframe. This picture which is Defense Exhibit #1, is a picture of the video that you took that night?

A It's a picture of the video from July 25th which was the attempted traffic stop on the Bypass, the very first contact that would have had anything to do with that motorcycle.

[p.41]

THE COURT: And then Defense Exhibit 1 (they are Commonwealth's Exhibit 1 but Judge says Defense) collectively, these are from Mr. Collin's Facebook page.

A Yes, ma'am, that's correct.

THE COURT: When did you observe these?

A Those were observed on September 10th when I was at the DMV parking lot speaking with Mr. Collins. I wasn't speaking with him exactly when I looked at those but that was the same day.

THE COURT: And this is before you go to his residence?

A That's correct, yes, ma'am.

THE COURT: Did you---did you know whose residence the Delmeade Avenue house was when you arrived there?

A No, I did not. I was not aware.

THE COURT: And Commonwealth's Exhibit #2 is how you found the motorcycle on September the 10?

A Yes, ma'am, that's correct.

THE COURT: And then Commonwealth's Exhibit #3 is what the bike looked like when you pulled off the cover?

A Yes, ma'am.

THE COURT: Thank you. Are there any questions as a result of the Court's questions?

MS. WINN: No, Your Honor.

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THE COURT: Thank you, Officer Rhodes, you may stop down. Further evidence, Ms. Winn?

MS. WINN: No, Your Honor, the Commonwealth rests.

THE COURT: Evidence, Mr. Weber.

MR. WEBER: First of all I call Candace Beach.

THE COURT: Candace Beach. If you'll come forward through the double doors and please remain standing at the witness box and raise your right hand.

CANDACE BEACH, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Weber

Q If I could have Commonwealth's Exhibit #1 the photographs?

THE COURT: Let me staple those for you.

Q Tell the Court your name please?

A Candace Beach.

Q And where do you live now?

A 2304 Delmeade Lane.

Q And when did you move into Delmeade?

A It was August 8th.

Q August 8th of 2013?

A Yes.

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Q And what is or was your relationship with Ryan Collins at that time?

A We were together. He is the father of my child.

Q Now prior to August 8th where were you living?

A Well back and forth between my house and then his mom's, so 103 Northfields.

Q At his house on Northfields Circle?

A Uh-huh. (Indicating. yes.)

Q Okay and after August the 8th when you moved onto Delmeade did he move in with you or did he spend nights with you or---

A He didn't move in he just stayed the night occasionally, like a couple nights a week.

Q But he was an invited guest to spend the night there?

A Yes.

Q And on September the 10th, the day he got arrested had he spent the night there the night prior?

A Yes.

Q All right. Now I want to show you what the Commonwealth has marked Commonwealth Exhibit 1, I'm going to show you photograph two and ask if you recognize that photograph?

A I do.

[p.44]

Q What is in that photograph?

A There is a streetlight, the edge of a 4-Runner and then a black TL.

Q You call it a TL?

A Well Acura TL.

Q Acura.

A Uh-huh. (Indicating. yes.)

Q Okay. And how long was that Acura actually at your house?

A Not long because I was the one that actually took him to go buy the car. And then like when we got back to town one of his friends was right away interested in buying it.

Q I mean like one day or---

A Yeah, like a day, yeah.

Q I'm going to show you the other photograph that's part of Commonwealth Exhibit 1 and ask if you recognize that?

A Uh-huh. (Indicating. yes.)

Q What's in that photograph?

A There is a silver Acura TSX and then the 4-Runner and then my roommates Civic which she still currently has.

Q Okay. So this dark car in the driveway here---

A It's a Honda Civic.

[p.45]

Q Okay. It's not the black Acura?

A No.

Q The black Acura was already gone prior to—

A Yeah.

Q Do you know how long the motorcycle that was in that photograph had actually been at your residence prior to September 10th?

A Not long, maybe a week, week and half, max.

THE COURT: I'm sorry, I didn't hear the answer.

A A week, week and a half, max.

THE COURT: The motorcycle.

A Uh-huh. (Indicating. yes.)

Q That's all,

MS. WINN: We have no questions, Your Honor.

THE COURT: You may step down.

A Thank you.

MR. WEBER: Your Honor, I'll call Terry Roberts. I just have a few very brief questions for her.

THE COURT: If you will come forward through the double doors and remain standing and raise your right

hand. Ms. Roberts, I'm going to ask you to please keep your voice up.

MS. ROBERTS: I didn't hear you.

THE COURT: Please keep your voice up.

MS. ROBERTS: Okay.

[p.46]

THE COURT: Thank you.

TERRY ROBERTS, having been so duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Weber

Q Tell the Court your name, please.

A Terry Lynn Robert.

Q And where do you live?

A 103 Norfields Circle, Charlottesville.

Q And is that in Albemarle County.

A Yes.

Q And do you know the defendant, Ryan Collins.

A He's my son.

Q And on---I want to go back to June 4th of 2013.

A Uh-huh. (Indicating. yes.)

Q Were you living at Northfields Circle?

A Yes.

Q Who was living in that house with you at that time?

A Ryan, my other son, Bryan, Candy and my granddaughter.

[p.47]

Q Okay. On June the 4th was there an event that sticks out in your mind as something that happened on that day?

A Well Ryan had trial on June 4th.

Q Had trial where?

A In Albemarle County.

Q In Albemarle County or the City of Charlottesville?

A The city, sorry, the city, sorry.

Q And did he appear in Court on that day?

A Yes, he did.

Q And did you appear with him?

A Yes.

Q And what happened as a result of that hearing in court.

A He was released from house arrest and charges were---

Q So up until June the 4th he was on house arrest.

A Yes, he was home incarcerated.

Q He had a bracelet on?

A Yes, he had an ankle bracelet.

Q Okay, and on June the 4th the Judge released him of that obligation, is that right?

A That's correct.

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Q The case got continued?

A Continued and he was released from house arrest.

Q And how did you have to go about getting him off of house arrest?

A Ryan had to report to Staunton within the next 28 to 48 hours, 24 to 48 hours to be released.

Q So when was he physically removed? Was it that day or the next day?

A No, it wasn't the 4th, it was the next following day.

Q Okay, so on June the 4th he was still on house arrest?

A Yes, he was on house arrest.

Q Did he own a motorcycle at that point?

A No.

Q No further questions, Your Honor.

THE COURT: Cross examination.

MS. WINN: The Commonwealth doesn't have any questions, Your Honor.

THE COURT: Thank you, Ms. Roberts, you may step down. Further evidence, Mr. Weber? Any rebuttal, Ms. Winn?

MS. WINN: No, You Honor?

THE COURT: So argument, Mr. Weber, your motion, you are heard first and last.

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MR. WEBER: Yes, Your Honor, the legal issue here is fairly straight forward and the two cases that are on point are, we have on point are United States v. Jones and Florida v. Jardines and I got a copy for both of you, the Commonwealth and the Court. A brief synopsis here, Your Honor, United States v. Jones is 565. US, don't have a page number but it's a 2012 case. This is the one where the police officers attach a GPS unit to a car and the challenge was whether or not this was in violation of the law. In fact, in that case the police had actually gotten a warrant to attach the GPS unit but it expired in ten days and they attached it on the eleventh day. And the question was even though they might have had probable cause initially with the expired warrant did they have legal cause to go in that car and attach a GPS unit. The interesting part about this whole case, Your Honor, is that it's a case revolving around trespass on the personal property by a police officer. It has nothing to do with what is traditionally been held as a 4th Amendment standard which was reasonable expectation privacy. The Court in that case held that the warrant had expired. The police officer's violated the law by trespassing and attaching the unit to the vehicle and they suppressed all the evidence. So then the next case, Your Honor,

has to do with Florida v. Jardines and this as to do with a case where the police had gotten a tip, some sort of anonymous

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tip that the occupant of the house may have been dealing drugs, they observed the house, didn't see anything. They called the drug detective dog. They brought the drug detective dog up under the house and the dog alerted and then they subsequently got a search warrant and found marijuana in the house and a number of other things. And the question was whether or not the entry with the dog for purposes of search was a trespass. Whether it violated the 4th Amendment and the Court held that it did. Again, this is a case where they said that the reasonable expectation of privacy is not---is not an issue. The home and the curtilage around the home are protected areas and that the officers may not enter that area for the purposes of doing a search without a warrant. Cold heart, cold heart facts. In this case, Officer Rhodes did exactly that. He entered the residence. He didn't know who lived there. He didn't get permission to enter it. When he subsequently determined that Mr. Collins, although he was not the lessee of the place he was an overnight guest and had been an overnight guest that night and he's got standing to challenge any trespass on that property as a result of this. There's, again, I would argue that even in this case he trespassed, but there's not even a probable cause to do that. He's got the silhouette of a motorcycle that he thinks may have been involved in an earlier incident, two earlier incidents, by the way, from June '04 and

[p.51]

July the 25th. We've got no evidence that that same motorcycle was the one that was involved. We certainly don't have any evidence that Mr. Collins was the one even driving the vehicle on that day. In fact, you heard the officer testify he ran the tag and the tag number was different than the one that was on the motorcycle and came back to an Eric Jones. Eric Jones had had vehicle for several years or at least had that tag for several years. We know that somebody eluded the police on June the 4th. Somebody eluded the police on July 25th, but even with all the evidence that he's gained as a result of trespassing on the property there is still no probable cause to charge, to suspect Mr. Collins of eluding on July the 25th. That's what the purpose of the search was for was to evidence of eluding. We still don't have that in spite of the fact that he's got some---our argument is he's has no valid reason to suspect that Mr. Collins was the one that was guilty of the eluding. He had no probable cause to enter. He had no search warrant. He didn't have permission to do so and therefore it was a violation of the law. The cases that were cited by the Commonwealth in their brief were just not even close to being on point. They cite Ellis v. United States. It's a 1996. And again it just got a general proposition that probable cause where there's evidence of a crime or contraband. You know motorcycles like that can be found anywhere. The motorcycle

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itself is not evidence of eluding. That was the point. Even after looking at the motorcycle and getting all the identifying---he still has no probable cause to suspect

that that motorcycle and that Mr. Collins was the one that did the eluding. In this case there is neither evidence of a crime or are the crime for which he was trying to investigate nor is it contraband. So I would just argue that there is no probable cause here. Carroll v. United States is the one that the cited from 1925. That has to do with the automobile exception to the warrant. But that is just not even applicable here. What we're really talking about here is trespassing on real property. Trespassing on the curtilage of a home for the purposes of doing investigation. I would conclude that Officer Rhodes violated the law in trespassing on private property. It was for the purpose of the search. He has no probable cause to do so. He certainly had no exigent circumstances. And any information that he gained as a result of that illegal trespass (unintelligible) including VIN number, description of the motorcycle that was there and the motorcycle itself. Thank you, very much.

THE COURT: Before you sit down I may one question if I'm recalling the right Jones case. But with regards to Jones, didn't the Court find that the government had forfeited their argument on probable cause so they didn't address the argument on probable cause and I'm reading from

[p.53]

the opinion, the government argues in the alternative that even if the attachment (unintelligible) device was a search it was reasonable and thus lawful under the 4th Amendment because officers had reasonable suspicion and indeed probable cause to believe Jones was the leader. We have no occasion to consider this argument. The government did not raise it below and

the circuit court did not address it. We consider that argument to be forfeited. How does that impact this Court's analysis?

MR. WEBER: Well it impacts because the argument is probable cause to believe that he committed the eluding nor is there probable cause that this particular was being driven by Mr. Collins on July 25th. All of this is occurring on September 10th. The photographs from the Facebook page were September 10th. This is Delmeade evidence of September 10th. It's all done on September 10th which is some month and a half after the July 25th date. So I'm arguing that there is no probable cause. That---I'm also relying on not just the Jones case but the other case that I cited, the Reaves case which talks about the tip and the going into the curtilage of the home for the purposes of a search. That that case is even more on point than Jones so I think that the fact is the officer didn't have probable cause to search that motorcycle. He had plenty of alternatives. He could have gotten search warrant perhaps. But the magistrate

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might have said tell me why that's evidence of eluding on July 25th. Maybe he just thought he couldn't get the search warrant. I don't know, Your Honor, but the fact is, he didn't, but trespassing on private property for the purposes of the search and got the information subsequent to that that vehicle was, in fact, reported stolen had nothing to do with eluding which was the reason for the, which he's claiming is the reason for the search in the first place.

THE COURT: Thank you. What say you, Ms. Winn?

MS. WINN: Your Honor, while there is a Constitutional 4th Amendment action against a reasonable search and seizure; Mr. Collins' arguments are misguided. The search that Officer Rhodes conducted of the orange motorcycle September 10th, 2013 was reasonable and lawful. The Supreme Court has long recognized an automobile exception to the traditional requirement of probable cause in a warrant. In Carroll v. United States the Court concluded that automobiles were readably mobile and therefore easy (unintelligible) moved from a jurisdiction. Probable cause alone is enough to justify a search and a warrant is unnecessary. The Supreme Court confirmed this in Maryland v. Dyson in 2013 and the (unintelligible) is 527, US 465, where they explicitly ruled that warrantless search of a vehicle that was in a private driveway was lawful within the 4th amendment and the Carroll Doctrine applied to that. Mr. Collins' arguments about Jones and Jardines are both off point. In Jones, the Court said that the government did not argue Carroll, so the Court considered it waived the doctrine wasn't an issue. In Jardines it was about (unintelligible) the motorcycle (unintelligible) and the Carroll Doctrine should apply. And on September 10th Officer Rhodes did have criminal probable cause for several reasons. One, he'd seen the picture of a motorcycle in front of the house on Mr. Collins Facebook page. That wasn't Eric Jones Facebook page or anyone else's. And in that same picture was the car that Mr. Collins was trying to register at the DMV that day. Officer Rhodes saw that the house on the Facebook photograph was on Delmeade Avenue. When Officer Rhodes approached and knocked on the door of the house Mr. Collins answered. Two, the motorcycle that Officer Rhodes was looking for was unusual. It has

an extended sway arm that made the motorcycle (unintelligible) longer than a standard bike and it had chrome wheels. Both of these components were described by Officer Rhodes and being unique and uncommon (unintelligible) motorcycles. Furthermore, you can tell that the photographs, that in the photographs of the motorcycle from Mr. Collins' Facebook page, the motorcycle is in the same exact place as it was on Delmeade Avenue that day on September 10th. The 4-Runner was in front of it and it was beside the brick wall. When Officer Rhodes approached the house from the

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public sidewalk he did see the motorcycle partially covered from the tarp. From the position he could see that it had the same chrome wheels and it was longer than a standard bike. Furthermore, the motorcycle in question is stolen property so Mr. Collins can't object to the seizure of it, which, the only thing that he can object to is the probable cause itself which Maryland does include---covers because the Court said that it was a case, it was a common entrance to a private driveway if there is probable cause which Officer Rhodes had that day. Because Officer Rhodes had sufficient probable cause he did not need to have warrant. The removal of the tarp covering the motorcycle was lawful under the 4th Amendment and the information gained from the removal should not be suppressed. Thank you.

THE COURT: Mr. Weber, Rebuttal.

MR. WEBER: Your Honor, the automobile exception to my understanding is the search of the automobile not a search for an automobile. That's going to be the

search for this time that was going on private real estate, personal home to search for the vehicle, not the search of the vehicle. Automobile exception was created for officers on the street when they stop somebody and they know there is going to be maybe contraband in the vehicle and it's an exception to a warrant requirement. That exception does not apply in this case. That vehicle was parked in a private driveway.

[p.57]

He had the capacity to get Officer---He certainly had to capacity to send Officer McCall to Jarman's to get the receipts. He could have sent Officer McCall to try to get a search warrant at that point and if Mr. Collins coming out of the place (unintelligible) at that point. So I would argue that the automobile exception just doesn't apply here. The question is whether he had probable cause. I'd argue that he didn't, but even if the Court finds that based upon a silhouette, based upon a, you know, little bit of chrome on there and based upon some statements made at DMV that that's sufficient probable cause, there's no exigent circumstances here. I would still argue that even with probable cause he's got get---got to get a warrant. He's trespassing on property for the purposes of doing a search. He's got no exigent circumstances. He's got no---I would argue no probable cause. Because even with the information he was able to glean from the motorcycle he still has no probable cause to charge him with a crime of eluding. So this is where we are. I think it all ought to be suppressed, Your Honor. Thank you.

THE COURT: So the Court is going to take about a ten minute recess.

(Recess)

THE COURT: Se we are back on the record in the case of Commonwealth v. Ryan Collins. Mr. Collins is in the

[p.58]

courtroom with his counsel, Mr. Weber. Ms. Winn and Mr. Casey are here on behalf of the Commonwealth. And here is the ruling of the Court. So I think the distinction that the defense is making is as he stated that the officer is not searching in the vehicle, he is searching for the vehicle. And Carroll obviously established that a search in a vehicle can be established when there is probable cause if that is where the evidence will be. In this case the issue is what needs to be determined to search for the vehicle. I looked at the Florida Hardines case that was cited by the defense and I don't think it's applicable---in terms of the facts. That was the search that involved a drug dog. And the issue seemed to be having something like a dog or I think there was mention of the heat activated devices that can look into homes using something other than somebody walking up to the door and how far that would go in terms of being permitted when a person is allowed under the 4th Amendment to be free from unreasonable government intrusion. But while I don't find the facts to be similar, I find the issue to be similar and that is what is a reasonable e~pectation of privacy. The 4th Amendment protects the right of man to be free from unreasonable governmental intrusions. So in examining this case the Court finds that the testimony is of the officer is that he pulls up the pictures from Mr. Collins Facebook

page. When he shows Mr. Collins the pictures, Mr. Collins

[p.59]

says he doesn't know anything about the motorcycle and he doesn't know anything about the residence. And the Court finds there is a reasonable inference of why someone would post on their Facebook picture a residence that he doesn't know anything about and a picture of a motorcycle that he doesn't know anything about. And the Court would note that the motorcycle is clearly a view in the picture. In addition he said that it had been a long time since he had ridden the motorcycle which the Court would say reasonably infers he doesn't have a personal interest in this particular motorcycle. In this case the officer described the motorcycle that he saw that night as being unique. It was extended. It had the chrome wheels. He described the colors as being black. And I think he said it was a Suzuki. There was Kawasaki mentioned but I think it corrected it and said it was a Suzuki. And that when he was looking at this picture that the motorcycle that is shown in Commonwealth's Exhibit 1 met all the characteristics, was almost identical to the bike that he saw on that occasion of July---of the July when the eluding occurred. The Court will note when looking at Commonwealth's Exhibit #2 that the bicycle is in the exact same position or appears to be almost identical position as it is in Commonwealth's Exhibit #1. It appears to be about the same size, turned in the same way. The officer indicated that it was a longer type of motorcycle. He could

[p.60]

tell even when it was covered. It does appear to be while it's in driveway and the bike itself is covered that it's location does not appear to be particularly covered the Court cannot specifically but it does appear that it can be seen from a sidewalk. In noting that the sidewalk is shown in Commonwealth's Exhibit #1 as well as the silver vehicle that's shown and clearly you can see those even from away from away from the sidewalk. So the Court finds that where this is a---where this is in a area where it is exposed to the public where the officer asked Mr. Collins about the motorcycle and he indicated he didn't know anything about it, where it's in the exact same location, where it matches the chrome wheels, the Court finds that there was probable cause for the search and therefore it was not an unreasonable governmental intrusion. The Court is going to deny the motion to suppress. Your exception to the Court's ruling is noted. Is there anything further the Court needs to address today?

MS. WINN: No, Your Honor

THE COURT: Mr. Weber.

MR. WEBER: Note the exception, Your Honor.

THE COURT: It's been so noted. Do we need to set the matter for trial?

MR. CASEY: We have a trial date next week.

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THE COURT: Okay. Mr. Collins has been recognized in writing?

MR. CASEY: I believe so, Your Honor.

MR. WEBER: Your Honor, Just to make sure we're all on the same page. Two trials scheduled next week. They should be back to back trials.

MR. CASEY: I'm not sure if I understand what you're saying.

MR. WEBER: Two charges.

MR. CASEY: Right.

MR. WEBER: There's a charge for stealing stolen property and there's a charge that has to do with the title with DMV and I'd ask that those charges be tried separately. But we can try them back to back on the same day.

MR. CASEY: Oh.

MR. WEBER: I want make sure that that was the understanding.

MR. CASEY: It is not.

THE COURT: Oh, I see, in the afternoon, correct. That would be fine. Thank you. So the Court does confirm that Mr. Collins has been recognized in writing so you are free to go, thank you.

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STATE OF VIRGINIA AT LARGE:

I, Deborah L. Lawrence, Notary Public in and for the State of Virginia at Large, having been so duly commissioned and qualified, do certify that the foregoing court proceeding were so duly taken by

Brittany Herring at the time and place specified in the caption hereof, said witness having been so duly sworn.

I do further certify that said hearing was correctly taken by me by mechanical methods and that the same was accurately written out in full and transcribed into the English language by me and that said transcript is a true, accurate and correct record of the testimony by said witness.

I further certify that I am neither attorney nor counsel for or related to or employed by any of the parties to the action in which this hearing was taken and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

My commission expires July 31, 2014.

Given under my hand and seal this 6th day of May. 2014.

/s/ Deborah Lawrence
Notary Public - 2261057

APPENDIX D

Virginia:
IN THE CIRCUIT COURT FOR THE COUNTY OF ALBERMARLE

December 2, 2013 TERM

THE GRAND JURY CHARGES THAT, in the County of Albemarle **RYAN AUSTIN COLLINS** did unlawfully and feloniously

On or about September 10, 2013, buy or receive stolen property, having a value of $200.00 or more, belonging to another, knowing at the time of receipt that the property had been stolen, in violation of §§ 18.2-108; § 18.2-95 of the Code of Virginia (1950) as amended.

VCC CODE: LAR-2808-F9

Docket Number:

Grand Jury Witness: David W. Rhodes
Albemarle County Police Department

A True Bill /s/_____
Foreman of the Grand Jury

Not A True Bill _____
Foreman of the Grand Jury

APPENDIX E

SUPREME COURT OF VIRGINIA

Record No. 151277
Court of Appeals No. 1096-14-2

[Filed November 22, 2016]

Ryan Austin Collins,	)
Appellant,	)
	)
against	)
	)
Commonwealth of Virginia,	)
Appellee.	)
	)

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 15th day of September, 2016 and grant a rehearing thereof, the prayer of the said petition is denied.

Justice McCullough took no part in the consideration of this case.

A Copy,

Teste:

Patricia L. Harrington, Clerk

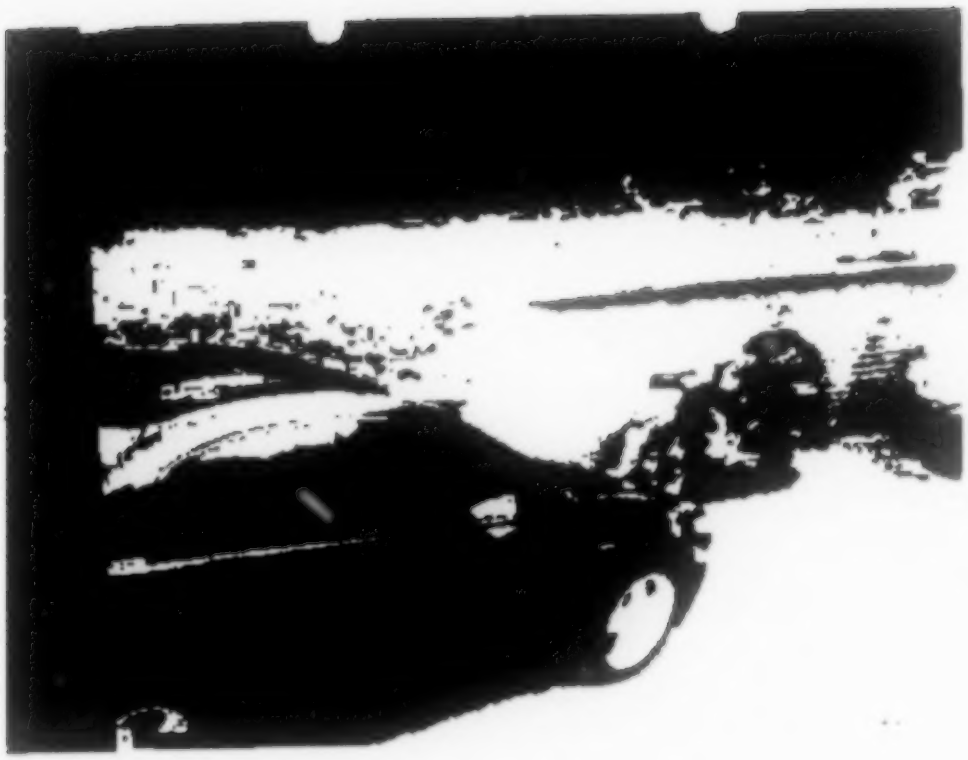
By: /s/_____

Deputy Clerk

APPENDIX F

Commonwealth's Exhibits Admitted at April 30, 2014 Hearing

Exhibits 1-3



APPENDIX G

Defendant's Exhibit Admitted at April 30, 2014 Hearing

Exhibit 1